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Citation: *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Université Laval*, 2000 CanLII 3 (QC T.D.P.)
Date: *2000-08-02*
Docket: *200-53-000013-982*

CANADA
PROVINCE OF QUÉBEC

DISTRICT OF QUÉBEC

HUMAN RIGHTS TRIBUNAL

No. 200-53-000013-982
PRESENT:

THE HONOURABLE MICHÈLE RIVET

WITH THE ASSISTANCE OF ASSESSORS:

Mtre. Diane Demers

Mtre. François LeComte
DATE: 2000 08 02

COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, acting on behalf of the persons described below as victims and complainants (MONIQUE RHÉAUME ET AL.)

Plaintiff

Represented by Mtre. Béatrice Vizkelety

v.

UNIVERSITÉ LAVAL

Defendant

Represented by Mtre. Bruno Lepage

Mtre. Anne-Marie Laflamme

Beauvais, Truchon et associés

and

SYNDICAT DES EMPLOYÉES ET EMPLOYÉS DE L'UNIVERSITÉ LAVAL

Interested party

Represented by Mtre. Johanne Dumont

Canadian Union of Public Employees

Hearings held in Québec City on December 6, 7, 8, 14, 15 and 16, 1999.

JUDGMENT PLAN

[1] The Human Rights Tribunal (hereinafter called the Tribunal) is seized of an application submitted by the Commission des droits de la personne et des droits de la jeunesse (hereinafter called the Commission) to the effect that, following the implementation of a pay equity system which recognized that the value of work performed by Clerical Group employees was equal to that of work performed by Trades and Services Group employees, Université Laval (hereinafter called the University) applied, with the consent of the Syndicat des employées et employés de l'Université Laval (hereinafter called the Union), a compensation system that has gender-based discriminatory effects on the Clerical Group. More precisely, Clerical Group employees, who are predominantly female and who are paid according to an increment structure, were integrated into pay scales at the increment associated with a salary immediately above that which they earned prior to December 1, 1995, while Trades and Services Group employees, who are predominantly male, were granted a salary structure based on single rates of pay and automatically receive the maximum in the pay scale.

[2] The Commission claims that this compensation system, which maintains a wage gap between the male-dominated Trades and Services Group and the female-dominated Clerical Group despite the fact that the employees in each group perform work of equal value, interferes with the right of Clerical Group employees to full and equal recognition and exercise of their right to non-discrimination in conditions of employment and in remuneration without distinction, exclusion or preference based on sex, contrary to the provisions of sections 10, 16 and 19 of the *Charter of human rights and freedoms* (R.S.Q., c. C-12) (hereinafter called the Charter).

[3] In its first initial application, served on November 24, 1998, the Commission sought the following conclusions:

ORDER the defendant and the interested party to **CEASE** using the compensation system that has discriminatory effects on Clerical Group employees;

ORDER the defendant University to **REMEDY** retroactively to December 1, 1995 the prejudice suffered by persons concerned in the Clerical Group owing to the application of the discriminatory compensation system and, particularly, to **PAY** the complainant Clerical Group employees a lump sum of $928 426 (nine hundred and twenty-eight thousand four hundred and twenty-six dollars), subject to adjustment, broken down as follows: (67 names follow).

[4] On November 26, 1999, the Commission served a request to amend its initial application because other Clerical Group employees had contacted the Commission after it filed the application saying that they too were affected by the discriminatory compensation system.

The Commission sought the following conclusions:[1]

ORDER the defendant and the interested party to **CEASE** using the compensation system that has discriminatory effects on Clerical Group employees;

ORDER the defendant University to **REMEDY** retroactively to December 1, 1995 the prejudice suffered by persons concerned in the Clerical Group owing to the application of the

discriminatory compensation system and, specifically:

to **RECOGNIZE** retroactively, for the persons whose names appear in Appendix 1, all the present and future rights, advantages and privileges to which they would have been entitled had it not been for the application of the discriminatory compensation system;

to **PAY** the persons whose names appear in Appendix 1 sums to compensate for losses suffered since December 1, 1995 because of the application of the discriminatory compensation system, to which they would have been entitled had the defendant University applied on that date to the members of the Clerical Group the single-pay-rate structure that it applied to the employees of the Trades and Services Group;

ORDERthe defendant University to pay each of the Clerical Group employees who filed a complaint and whose name appears in Appendix 1(A) $10 000 in moral damages for insult, humiliation and violation of their dignity and their right to full and equal recognition and exercise of their fundamental rights without discrimination based on gender;

THE WHOLE with interest as of the service of the offer of remedial measures, i.e. on November 11, 1998, at the rate set according to section 28 of the *Act respecting the Ministère du Revenu* (R.S.Q. c. M-31), as article 1619 C.C.Q. authorizes, plus costs.

[5] Two lists of names were filed in Appendix 1 of this initial application: List A, comprising 67 names, already filed at the same time as the first initial application; and List B, comprising 71 new names.

[6] During the first day of the hearings on December 6, 1999, the Commission filed a request to re-amend its initial application in order to clarify the content of the order to cease the act complained of, to specify and update the base amounts claimed for wages lost until November 1, 1999 and to specify the requested adjustments to these amounts, including adjustments relating to wage losses that Clerical Group members would continue to suffer after November 1, 1999, up to the date of the judgment.

The following conclusions were sought:[2]

ORDER the defendant and the interested party to **CEASE** using the compensation system that has discriminatory effects on Clerical Group employees by applying to Clerical Group employees the same single-pay-rate structure that is applied to Trades and Services Group employees performing work of equal value in Levels 2 to 10;

ORDERthe defendant University and the interested party to **RECOGNIZE**, in regard to Clerical Group jobs, which should thus be remunerated according to a single rate of pay like Trades and Services Group jobs, that it is the last increment of the applicable pay scale which is considered to be the increment that corresponds to this single rate;

ORDER the defendant university to **REMEDY** retroactively to December 1, 1995 the prejudice

suffered by persons concerned in the Clerical Group owing to the application of the discriminatory compensation system and, specifically:

TO RECOGNIZE retroactively, for the persons whose names appear in Appendix 1, all the present and future rights, advantages and privileges to which they would have been entitled had it not been for the application of the discriminatory compensation system;

TO PAY the persons whose names appear in Appendix 1 sums to compensate for losses suffered since December 1, 1995 because of the application of the discriminatory compensation system, to which they would have been entitled had the defendant University applied on that date to the members of the Clerical Group the single-pay-rate structure that it applied to the employees of the Trades and Services Group, in accordance with the amounts indicated in Appendices 2 and 3;

TO PAY, in addition to the above, appropriate amounts to the persons whose names appear in Appendix 1 to take into account overtime worked since December 1, 1995, increment advancements during the year, balances of sick leave credits paid, temporary assignment premiums, any promotions obtained since that date in a Clerical Group job and salary increases granted between June 1, 1998 and June 1, 1999; and

TO PAY, according to the same bases of calculation, additional sums to the persons whose names appear in Appendix 1 to compensate for wages lost since November 1, 1999, up to the date of the present judgment;

ORDER the defendant University to pay each of the Clerical Group employees who filed a complaint and whose name appears in Appendix 1(A) $10 000 in moral damages for insult, humiliation and violation of their dignity and their right to full and equal recognition and exercise of their fundamental rights **without discrimination based on gender**;

THE WHOLE with interest as of the service of the offer of remedial measures, i.e. on November 11, 1998, at the rate set according to section 28 of the *Act respecting the Ministère du Revenu* (R.S.Q. c. M-31), as article 1619 C.C.Q. authorizes, plus costs.

[7] The University, for its part, is contesting all of the conclusions sought by the Commission. In addition, it has called in warranty the Syndicat des employées et employés de l'Université Laval (CUPE, Local 2500, FTQ - CLC) and is demanding that if the Tribunal accepts the Commission's claims the Union be condemned equally with the University.

[8] During the proceedings, the attorneys filed, by mutual agreement, Exhibits P 14 A and P 14 B, which specify the amounts payable in material damages to the complainants and victims for the period up to October 31, 1999 should the Tribunal decide that discrimination has occurred.

[9] Before examining the facts as presented in evidence, we will first consider the requests for amendment.

[10] The amendments requested by the Commission were aimed, on the one hand, at adding to the application other Clerical Group employees who had contacted the Commission saying that they too were affected by the compensation system at issue in the case at bar and, on the other hand, at specifying what remedial measures were required and explaining certain salary calculations.

[11] Are the amendments requested by the Commission admissible?

[12] In fall 1996, 67 people, including 63 women and 4 men, filed a complaint with the Commission to the effect that the agreement concluded in July 1996 with respect to the University's pay equity exercise discriminated against Clerical Group employees.

[13] Upon reading the file, we learned that, when the Commission had finished investigating this matter, it adopted a resolution recommending remedial measures to the University and the Union. The resolution contained following conclusions, which should be quoted here:

> [Translation]
>
> ...
>
> **TO RECOGNIZE** that the compensation system applied to the Clerical Group is discriminatory based on sections 10, 16 and 19 of the Charter;
>
> **TO UNDERTAKE** to change the compensation system applied to the Clerical Group so that it conforms to that of the Trades and Services Group, whose employees are remunerated according to a single-pay-rate system.
>
> ...
>
> **TO REMEDY r**etroactively to December 1995 the prejudice suffered by persons concerned in the Clerical Group owing to the application of the discriminatory compensation system and, particularly,
>
> **TO PAY** the employees of the complainant group a lump sum of $940 262 (nine hundred and forty thousand two hundred and sixty-two dollars), subject to adjustment, broken down as follows: (the name of and amount claimed by each person follow).[3]

[14] Subsequently, other people, also from the Clerical Group investigated by the Commission, joined the initial application filed on November 18, 1999.

[15] During the hearing, the Commission, the University and the Union studied the two lists of people, namely, that originally filed with the initial application, i.e. List 1-A, and that containing the names of those who wanted to be added to the initial application, i.e. List 1-B. They filed the following admissions:

[Translation]

The complaints of people whose names appear in Appendix 1(B) were received on or around January 20, 1999 or in May 1999 at the latest, except in the case of Louis Baril, Hélène Delisle, Lyne Girard, Michel Raymond and Diane Robert. For these people, the parties agree that the date of consent, i.e. November 3, 1999, serves as the date of receipt for their complaint. All complaints were consented to except for those of Gaston Quirion and Monique Côté. The parties also concede that Huguette Côté's complaint was received on or around January 20.

[16] To dispose of the question of the admissibility of the amendments, it must first be mentioned that, with the coming into force of the *Pay Equity Act*, the Commission had the authority to investigate the situation involving wage discrimination at issue in this case. The following transitional measures are provided for in section 128 of the Act:

Complaints concerning discrimination in compensation on the basis of gender in violation of section 19 of the Charter of human rights and freedoms ... filed with the Commission des droits de la personne et des droits de la jeunesse before November 21, 1997 shall be examined and disposed of in accordance with the provisions of the Charter that were applicable at that time;

[17] The complaint alleging that the compensation system applied to the University's Clerical Group was discriminatory on the basis of sections 10, 16 and 19 of the Charter was pending before the Commission on November 21, 1997.

[18] It was this "situation" involving discrimination against the Clerical Group which the Commission had investigated and was authorized to investigate.[4]

[19] As indicated by its resolution, the Commission had investigated the remuneration of all Clerical Group employees, and it was the complaint that had prompted this investigation that had already ready been filed with the Commission when the *Pay Equity Act* came into force.

[20] Now that we have established that the group of people who joined the initial complaint are covered by section 128 of the *Pay Equity Act*, we must determine whether the Tribunal can admit the amendment aimed at adding their names to the application.

[21] Section 113 of the Charter stipulates that the Tribunal may render such rulings and orders of procedure and practice as the performance of its functions may require.

[22] However, since there is no mention of amendments in the prescribed rules,[5] we have to examine the applicable rules laid down by the *Code of Civil Procedure*.

[23] It is well settled that amendments must be allowed unless they are contrary to the interests of justice and would result in, as stated in section 203 of the *Code of Civil Procedure*, "an entirely new demand having no connection with the original demand".

[24] In other words, the rule is to allow amendments and the exception is to refuse them. The Court of Appeal has already said that section 203 of the *Code of Civil Procedure* must be construed in a broad and liberal fashion.[6]

[25] Therefore, we conclude that the amendments may be allowed at this stage and that this question should be disposed of on its merits. Adding parties to the application did not change the nature of the lawsuit or result in an entirely new demand having no connection with the original demand. On the contrary, the additions made by the plaintiff did not change the nature of the proof required regarding the situation involving discrimination that was alleged to derive from the pay equity system implemented in summer 1996.

1. The facts as presented in evidence

[26] The comprehensive pay equity exercise conducted by the University comprised two separate phases, the first of which lasted from 1991 to 1995 and the second, primarily from late 1995 to the first half of 1996. The case at bar focuses mainly on the results of the second and last phase, which are embodied in the agreement of July 10, 1996. To provide a better understanding of the issues, it is necessary to describe the events that took place between 1991 and 1995.

1.1The pay equity exercise and its results

1.1.1 First phase of the pay equity exercise

[27] The first phase of the pay equity exercise was launched on February 26, 1991, when the University and the Union signed a letter of agreement with a view to redressing gender-based salary inequities and taking steps to implement and maintain pay equity (Exhibit P-2). Under this agreement, a joint committee made up of representatives of both parties was created.

[28] The committee's mandate focused not only the job evaluation process that would have to be conducted in order to achieve the pay equity objectives but also on the commitments that would have to be made for that purpose. It provided for the analysis and adaptation, if necessary, of the gender-neutral evaluation plan drawn up by the Fédération des travailleurs et travailleuses du Québec (FTQ), the Conseil du trésor and its partners (hereinafter called the 16-factor evaluation plan); the selection of a sample of jobs to validate the plan; the collection of data using existing job descriptions and job analysis questionnaires; the analysis of results; the identification and evaluation of benchmark jobs within the bargaining unit; and the evaluation of jobs as a whole.

[29] The agreement also included the following commitment in its general provisions:

[Translation]

When pay equity is implemented, no employee shall experience a reduction in salary or a salary freeze as a result of this measure. However, this provision does not apply to employees hired by the University after the date on which pay equity was implemented. (Exhibit P-2, at 185)

[30] In 1992, at the same time as the local joint committee was carrying out its work, the University and the Union decided to join an intersectoral university committee responsible for studying the question of pay equity among clerical staff, trades and services staff and technical staff represented by the Canadian Union of Public Employees (hereinafter called CUPE). This sectoral committee was made up of around a dozen universities or university components, which, for the most part, had similar job groups.

[31] According to Ms. Parent, Assistant Director of Human Resources at the University, and Ms. Jones, Job Evaluation Advisor with CUPE, the sectoral committee developed a job analysis method based on the 16-factor evaluation plan and identified benchmark positions for job comparison purposes. In 1994, the sectoral committee's work led to intensive negotiations in each university establishment, which, in the case of some participants, including the Université de Montréal, culminated in the signing of an agreement. However, in the case of Université Laval and certain other participants, no agreement was signed.

[32] Following the failure of the sectoral negotiations, efforts were pursued at the local level. The University suggested that the job evaluation and comparison exercise be repeated using an evaluation plan comprising 12 factors rather than 16. This proposal prompted the University and the Union to conclude a new memorandum of understanding in November 1995. In addition to including provisions on this second, local pay equity exercise, the memorandum stipulated that a lump sum for the period between 1989 and 1995 would be paid to employees who held a job that had been re-evaluated during the previous exercise (Exhibit P-3, section entitled *Protocole d'entente sur l'équité salariale*, concerning the memorandum of understanding on pay equity).

[33] The lump sums were calculated on the basis of the first job evaluation carried out with the 16-factor evaluation plan developed by the intersectoral committee and used by all universities during the first phase of the pay equity exercise. Once these calculations were completed, the local committee sent a notice to each employee indicating that, as of November 30, 1995, he or she was performing duties that corresponded to one of the jobs designated in the new list of job titles. This is what the parties called "the job designation exercise". The form letter used for job designation notices appears on page 1 of Exhibit P-3.

[34] In accordance with the memorandum of understanding, each employee had 12 days to contest his or her designation, that is, to contest the job that he or she had been ascribed. However, until the job classification process was finalized, lump sums were calculated on the basis of the job indicated in the designation notice.

[35] The memorandum of understanding also provided for the adoption of a job evaluation manual establishing the terms and conditions of the new exercise, the mandate of the joint committee and the comparison and evaluation parameters for grouping and classifying jobs (Exhibits P-3 and P-4).

[36] As filed with the Tribunal (Exhibit P-3), the memorandum of understanding on pay equity and the job evaluation manual form a single document. Points 4 and 5 of the memorandum set the basic parameters for drawing up the new salary structure and for establishing, directly or incidentally, the pay scales, applicable rates of pay and pay scale integration mechanisms that would have to be negotiated and applied at the end of the job evaluation and comparison exercise (Exhibit P-3, section entitled *Protocole d'entente sur l'équité salariale*).

[37] At this stage of its presentation of the facts, the Tribunal would like to point out that, based on the evidence submitted to it, the University and the Union were very conscientious in conducting the evaluation exercise. They did a remarkable job, not only because of the considerable amount of energy they devoted to it but also because of the rigorous approach they applied. The results of this exercise are not being contested.

1.1.2 Collective agreement concluded in 1991

[38] In 1991, when the pay equity exercise was initiated, the parties were governed by a collective agreement[7] that not only set salaries for the various positions but also established job groups and job classifications. Three main job categories were included in the agreement, namely: a) the "Trades and Services" Group; b) the "Clerical" Group; and c) the "Technical" Group.

[39] The main body of the agreement contains separate wage provisions for each group. Section 19 deals specifically with salaries. Appendices C, D and E provide detailed information on the rates and scales of pay applicable to employees, while paragraphs 19.06 (promotion) and 19.07 (transfer) present the specific terms and conditions of pay scale integration that applied to each job group, in the event that employees changed positions.

[40] "Trades and Services" Group employees who were promoted or transferred received the single hourly rate of pay provided for their new job.

[41] According to the provisions of the collective agreement, "Clerical" Group employees who were transferred were not assigned a new rate of pay unless their new job had different pay levels or increments. In that case, they were treated as if they had been promoted and were placed at the next highest increment in the pay scale applicable to their new job.

[42] "Technical" Group employees were governed by a classification system. Transfers did not usually entail a change in salary unless the position to which a staff member was transferred did not have an equivalent increment. In that case, the employee was subject to promotion rules, which stipulated that he or she must be placed at the next highest increment in the pay scale for the classification level applicable to the new job.

[43] Appendix "B" of the agreement lists the 238 jobs at the University that were grouped and reclassified during the pay equity exercise. It should be noted that, in this Appendix, jobs have not been grouped by occupational category but by the weekly hours of work. They are not

classified therefore on the basis of features specific to each group.

[44] Appendix "C" concerns the Trades and Services Group and comprises 4 sections: C-1, remuneration mechanisms; C-2, special provisions pertaining to apprenticeships; C-3, rates of pay by classification level; C-4, required qualifications. This appendix reveals that employees were remunerated according to a single rate of pay determined by the classification level to which their job was assigned. There were 24 possible classification levels or rates of pay, ranging from $11.97 to $17.88. Section C-4 presents the qualifications required with respect to education, experience or particular skills. According to this table, only 4 of the 59 jobs in this group required a high school diploma, while less than half (28 out of 59) required experience; only about 15 actually corresponded to trades that required a competency card under the laws and regulations governing the construction industry.

[45] Section C-4 also reveals that it was possible to move from one classification level to another in the case of "service" jobs simply by applying for a vacant position, given that no specific qualifications were required for most of these jobs. All of the other jobs in the Trades and Services Group, with the exception of "trades" jobs requiring a competency card (15 of the 59 jobs in this group) and jobs requiring basic vocational training (8 out of 59), were open to all University employees or to any other person from outside the University, where applicable.

[46] Appendix "D" concerns clerical jobs and comprises four sections: D-1, remuneration mechanisms; D-2, evaluation plans; D-3, list of jobs; D-4, pay scales. Section D-2 reveals that clerical jobs were classified on the basis of the cumulative value of 7 factors; each job was assigned to one of 10 existing classification levels based on the point score it obtained. Section D-3 presents the 114 Clerical Group jobs grouped by point scores in 9 of the 10 possible classification levels, while section D-4 presents the pay scales applicable to each level.

[47] Each pay scale did not have the same number of increments. Level 1 had 2 increments; Level 2, 4 increments; Levels 3 and 4, 5 increments; and Levels 5 to 10, 7 increments. However, the spread between increments was constant in all 10 levels, i.e., $0.32 in the first four levels and increasing by $0.02 per level in Levels 6 through 10.

[48] To use terms similar to those employed in Appendix C of the "Trades and Services" Group, "Clerical" Group jobs had 59 possible compensation levels or rates of pay, ranging from $11.17 to $17.52, applicable to 10 classification levels. In comparison, the "Trades and Services" Group had 24 possible compensation levels or rates of pay, ranging from $11.97 to $17.88, applicable to 24 possible classification levels.

[49] Unlike the Appendix on Trades and Services Group jobs, Appendix D does not contain a table of required qualifications for each job. In this case, the relative value and classification of each one could be established based on a description of the duties involved in each case, analyzed using an evaluation plan. Through what is known as "job designation", [Translation] "the tasks performed by each employee assigned to a given position were acknowledged to correspond to one of the job descriptions included in the list (classification and title) appearing in Appendix D-3" (Exhibit D-1, at 136).

[50] Appendix "E" concerns the Technical Group and comprises the following sections: E-1, remuneration mechanisms; E-2, career plans; E-3, job titles; and E-4, pay scales. As far as the remuneration mechanisms for this group are concerned, the concept of career plan played an important role in the establishment of job categories. According to the terms of the collective agreement, this group included all technical jobs, except that of technical assistant, which required skills and knowledge acquired by obtaining a diploma of college studies (Exhibit D-1, at 164).

[51] In 1991, there were 4 separate categories of technician, each of which had two classification levels depending on the complexity of the work performed or of the responsibilities assumed. Level 1 was reserved for people who had 10 years' pertinent experience in the position they occupied or who had reached the eleventh increment in Level II. Employees were placed at particular increments based on recognized experience or education in addition to basic requirements. There was also a grouping of three technical assistant categories which included several jobs with no basic requirements and which, accordingly, had only one classification level.

[52] Appendix E-3 lists the titles of the 45 technician jobs, grouped into 4 categories, and the 7 technical assistant jobs, grouped into 3 categories. Appendix E-4 presents the pay scales that applied to each category. The 4 technician categories had 12 increments in Level II and three in Level I. Owing to the mechanisms for moving to Level 1, each of the four technician categories had 14 possible compensation levels or rates of pay, ranging from $12.74 to $21.07 for the lowest-paid category, and from $14.22 to $23.07 for the highest-paid category.

[53] On account of the basic requirements relating to the obtainment of diplomas, only people who had completed the appropriate programs of study could move from one category or job to another in the Technical Group.

[54] The above-mentioned letter of agreement No. 6 concerning pay equity, dated February 26, 1991 (Exhibit P-1, at 184-186; Exhibit P-2), established the constitution and mandate of the pay equity committee and laid down general rules aimed at preserving employees' rights with regard to salaries and to requests for the review of job descriptions, job evaluations and job classifications. Its salary guarantee provisions stipulated that the salaries of people already employed would not be reduced or frozen owing to the implementation of pay equity. The first phase of the pay equity exercise was carried out under this agreement, while the second phase was conducted under the memorandum of understanding concluded in 1995 and filed as P-3.

[55] The document filed as P-3, which was signed during the negotiations, includes both the job evaluation manual and the memorandum of understanding on pay equity. It nullified and replaced letter of agreement No. 6 of the 1989-1992 collective agreement.[8] It should simply be mentioned that it maintained and explained the individual salary guarantee (paragraph 5 (a)) and set global compensation guidelines for the various groups (paragraph 4(e)) for the purposes of the wage negotiations that followed the job evaluation process.

1.2 The situation in 1996

1.2.1 Job evaluation, establishment of classification levels and job classification

[56] The memorandum of understanding signed in January 1996 (Exhibit P-3) stipulated that a joint committee must first evaluate existing jobs and that generic jobs must be established. As Ms. Parent explained during her testimony, article 4 of the memorandum of understanding said that the joint committee must:

[Translation]

... completely rewrite all job descriptions in generic form, a task which the parties agree to complete by February 23, 1996 at the latest using a proposal submitted by management. For this purpose, the parties agree to work exclusively in a joint committee and to research the new descriptions together, using only random samples of people concerned. A brief list of potential job designations shall be submitted by the Employer. The parties agree that this exercise will reduce the number of job descriptions used at Université Laval;

... evaluate these job descriptions based on the 12-factor plan drawn up by CUPE, which appears in the manual and will subsequently be included in the collective agreement;

... establish job designations.

[57] The latter task consisted in determining which job description now corresponded to the position occupied by each employee and in classifying each job based on the value assigned to it using the method described in the job evaluation manual.

[58] Ms. Jones and Ms. Parent explained that, in the course of the joint committee's work, the parties examined 238 existing jobs and reduced them to some 73 generic ones (Exhibit P-5). This exercise involved rewriting all job descriptions in generic form and determining the value of each job.

[59] The jobs were evaluated using a plan comprising 12 factors, namely, training, experience, muscle coordination, autonomy and judgment, complexity, mental effort, physical effort, communication, results, supervision, working environment and pace. Each factor was attributed a certain number of points, based on its importance, with the result that some had more points than others:

	FactOrs	LEVELS						
		name	1	2	3	4	5	6	7
1	training	19	37	56	74	93	111	130	
2	experience	26	52	78	104	130			
3	muscle coordination	12	24	36	48	60			
4	autonomy-judgment	18	36	54	72	90			
5	complexity	18	36	54	72	90			
6	mental effort	12	24	36	48	60			
7	physical effort	12	24	36	48	60			
8	communication	24	48	72	96	120			
9	results	24	40	60	80	100			
10	supervision	9	17	26	34	43	51	60	
11	working environment	10	20	30	40	50			
12	pace	13	25	38	50				

LIST AND VALUE OF FACTORS

[60] Ms. Jones explained that the next step consisted in determining the value of each job. In this regard, article 2.7 of the job evaluation manual (Exhibit P-4) stipulates that [Translation] "the total value of a given job is determined by adding up the point scores obtained for each sub-factor". Once the job evaluation exercise was completed, the joint committee defined the various classification levels and then classified each job according to these levels. The parties grouped all jobs of equal value together based on the point scores they obtained and assigned them to Levels 1 through 17.

[61] According to section 2.7 of the manual, jobs must be classified using a conversion table that provides for the establishment of 17 classification levels. A 26-point spread marks the cut-

off points between classification levels, except in Level 1, where the spread is 45 points, and in Level 17, where values range from 644 to 999 points. Level 17 is the highest classification level in which jobs may be placed, regardless of the point score they obtain.

[62] Ms. Jones explained that all but two of the jobs in both the Clerical Group and the Trades and Services Group were assigned to Levels 2 through 10. None were placed in Level 1 since none obtained a point score lower than that associated with Level 2. In addition, none of the jobs in these groups was assigned to Levels 15 or 16 because, as Ms. Parent indicated, owing to the point range associated with Level 17, the latter now included certain technician jobs which, based on the complexity of the tasks or the level of responsibility they entailed, used to be in Level I. Given that the Level-17 point range was 78 points higher than that of Level 14, two more classification levels had to be created between the highest level of technician and that of super technician to avoid creating a gap in the job classification model. Most Technical Group jobs were classified at levels above Level 10.

[63] Columns 1 and 2 of Exhibit P-5 present the 73 generic jobs and show the levels to which each job was assigned during the evaluation exercise. Columns 3 and 4 show the 238 titles of the former jobs that were grouped into the new generic jobs and the salary that was applied to each job. The salary indicated for Clerical Group employees corresponds to the maximum in the applicable pay scale while that indicated for Trades and Services Group employees corresponds to the single rate of pay applicable. The last column shows the breakdown of employees in these positions by gender.

[64] This exhibit marks the end of the first stage of the pay equity exercise, which was aimed at classifying jobs based on their value. During the next phase, the joint committee had to do a gender-based comparison of the salaries assigned to jobs deemed of equal value to determine whether, in the case of the persons concerned, there was any violation of their right to equal pay and, if necessary, to establish salaries that were exempt from discrimination.

1.2.2 Gender-based comparison of salaries

[65] In her testimony, Ms. Parent explained that this exercise consisted in comparing, within each classification level, the salary applied to jobs performed mainly by women with that associated with the best-paid job held by the largest number of men. In other words, if a better-paid job existed at a given level but was not the one performed by the most men, it was eliminated and the comparison focused on the job carried out by the highest number of men.

[66] Ms. Parent used Exhibit P-5 to show how this stage of the pay equity exercise was conducted. Level 2 included several male-dominated jobs such as: general assistant (4 H; $13.78), assistant storesperson (7 H; $13.78), truck driver (3 H; $14.87) and cleaner (60 H; $13.01). The salary paid for the latter job was chosen for comparison purposes because this job included the most men, i.e. 60. The salaries associated with the female-dominated jobs in this level were lower than, equal to or higher than the salary associated with the male-dominated job, i.e. $13.01. As a result, when the new pay rate for this classification level was set at $13.01, the 118 people concerned were affected as follows: 9 men and 12 women were liable to be no longer fall into the pay scale, 60 men and 2 women kept the same salary and 30 women and 5

men received an increase.

[67] Both Ms. Parent and Ms. Jones said that this result stemmed in part from the parameters set beforehand by the memorandum of understanding. These parameters, which established the total payroll and the maximum number of employees that could be classified as no longer falling into a given pay scale at the end of the exercise, inevitably affected the pay rate for each classification level. This explains why it was decided that the highest rate of pay for male-dominated jobs would not be used to set the pay rate for all jobs deemed of equal value following the evaluation process.

[68] However, at this stage of the salary comparison exercise, the joint committee worked with the maximum values applicable and did not take the individual salary guarantee into account. This approach made it possible to establish rates of pay based on the value attributed to jobs that were deemed equivalent within a given level. In other words, it made it possible to eliminate wage differences that once existed between jobs of equal value.

[69] In the case at bar, it is not the value assigned to each job that is being contested nor the resulting job classification. Similarly, no one is challenging the pay rates set at this stage of the comparison exercise for each classification level.

[70] However, what about the rates of pay and the methods of remuneration ultimately established for the "Clerical" and "Trades and Services" Groups ?

1.2.3 Establishment of rates of pay and remuneration methods

[71] As Ms. Parent indicated, rates of pay were determined on the basis of existing methods of remuneration. The three existing pay structures were combined into a single compensation system, as illustrated by the salary table (Appendix B5). The remuneration method applied to the first 10 classification levels was essentially the same as that used for the Clerical Group, while the one applied to the next 7 levels was the same as that used for the Technical Group.

[72] The spread between increments in each of the first 10 levels was set at a constant, fixed rate of 0.32• per hour from the first to the last increment in the pay scale for each level, except in cases where certain adjustments were required. In the 7 higher levels, the spread was set at that used in the pay scales of similar jobs in the public service held by people with a college diploma. It was equal to 3% of the rate of pay applicable to each increment and increased throughout the scale.

[73] This approach complies with the third paragraph of article 4 (e) of the memorandum of understanding, which stipulates that:

[Translation]

Rates of pay for the Technical Group cannot be less than those in effect for comparable jobs in the public and parapublic sectors.

[74] The new rates of pay also had to take into account the financial guidelines laid down in the memorandum of understanding signed in January 1996 (Exhibit P-3). Article 4 (e) of the memorandum expressly stipulates that the establishment of the new pay structure had to generate [Translation] "total recurring implementation costs equal to 120% of the recurring costs that would have been generated had the pay structure used at the Université de Montréal been implemented at Université Laval under the pay equity agreement". In other words, this provision set the total cost of the pay equity exercise that the parties were about to carry out.

[75] It was also stipulated that the final results had to take the individual salary guarantee into account. Article 5 (a) of the memorandum of understanding (Exhibit P-3) ensured that none of the people affected by the pay equity exercise would experience a reduction in salary because of the implementation of the new compensation system. Therefore, the parties had provided for "red circling", that is, for people receiving a higher salary than the maximum in their scale. However, the memorandum also stipulated that red circling could apply to only 12% of Clerical Group employees and 21% of Trades and Services Group employees.

[76] According to the second paragraph of article 2.8 of the memorandum, the classification levels provided in Appendix B5 applied to all jobs. The parties thus expressed their intention to draw up an integrative pay scale for the three job groups concerned. Appendix B, as included in the final document, is as follows:

Classification levels

	1	2	3	4	5	6	7	8	9	10
1	12.45									
2	12.69	13.01								
3	12.85	13.17	13.49							
4	13.16	13.48	13.80	14.12						
5	13.52	13.84	14.16	14.48	14.80					
6	13.59	13.91	14.23	14.55	14.87	15.19				
7	13.66	13.98	14.30	14.62	14.94	15.26	15.58			
8	13.69	14.01	14.33	14.65	14.97	15.29	15.61	15.93		

9	14.16	14.48	14.80	15.12	15.44	15.76	16.08	16.40	16.72
10	14.67	14.99	15.31	15.63	15.95	16.27	16.59	16.9	17.23 17.55
11	14.68	14.86	15.30	15.89	16.42	17.08	17.71	18.37	19.03 19.79
12	14.70	15.05	15.60	16.21	16.86	17.49	18.15	18.80	19.51 20.29
13	14.87	15.22	15.77	16.38	17.03	17.66	18.32	18.97	19.68 20.46
14	15.88	16.41	16.99	17.63	18.22	18.92	19.53	20.27	21.02 21.79
15	16.15	16.68	17.26	17.90	18.49	19.19	19.80	20.54	21.9 22.06
16	16.44	16.97	17.55	18.19	18.78	19.48	20.09	20.83	21.58 22.35
17	16.74	17.27	17.85	18.49	19.08	19.78	20.39	21.10	21.86 22.65

[77]This table presents a pay structure based on pay scales rather than single rates of pay for all levels except Level 1, to which no jobs were assigned.

[78]This is why article 4 (f) of the memorandum of understanding (Exhibit P-3) stipulates that the joint committee had to:

[Translation]

... establish integration mechanisms for the new compensation system, bearing in mind that, through the application of paragraph (b) of article 1, employees will be placed at the increment offering a rate of pay equal to or immediately above that which they received, to which the value of the difference calculated on November 30, 1995 was previously added.

[79]The way in which employees were integrated into the pay scales guaranteed that they would earn a salary that was equal to or higher than that which they were acknowledged to earn on November 30, 1995.

[80]However, despite the terms of article 2.8 of the memorandum of understanding on pay

equity, on July 10, 1996 the University and the Union signed an agreement on the implementation of the new compensation system within the scope of the pay equity exercise (Exhibit P-7), which stipulates the following in article VII concerning integration rules:

[Translation]

Employees shall be placed, for purposes of retroactive pay, at the increment offering a rate of pay equal to or immediately above that which they received, to which the value of the difference calculated on November 30, 1995 was previously added, without exceeding, however, the maximum rate associated with the jobs they have been assigned.

Trades and Services Group jobs are remunerated according to a single rate of pay; the last increment of the appropriate classification level is deemed to be the increment that corresponds to this single rate.

[81]In other words, at the end of the pay equity exercise, the University and the Union signed an agreement providing for two different remuneration methods: one based on pay scales for Clerical Group jobs and another based on single rates of pay for Trades and Services Group jobs.

[82]Clerical Group employees were placed at particular increments in the pay scales applicable to their respective classification levels, while their colleagues in the Trades and Services Group were assigned to the maximum increment in the same pay scales, given that their jobs were still subject to single rates of pay.

1.2.4 Negotiation of the July 10, 1996 agreement

[83]In regard to the implementation of these remuneration methods, Ms. Parent said that she had filed an application with the Union asking that increments be applied to all job groups, including the Trades and Services Group.

[84]Ms. Parent explained to the Tribunal that the University was seeking this solution for two reasons. First of all, it would be fair. The University wanted to apply a uniform system where all employees would be subject to increments, rather than a system involving two different remuneration methods, that is, one based on increments for two groups of employees and another based on single rates of pay for another group of employees.

[85]According to Ms. Parent, the second reason was that an increment structure more accurately reflects the institutional experience acquired by employees in the course of their employment. Since this argument is valid for all types of jobs, Ms. Parent affirmed that the University wanted to apply such a structure not only to Clerical Group employees but to staff in the Trades and Services Group as well.

[86]Ms. Parent said that she had met with strong opposition from the Union. Nevertheless, considering that there had been a significant overall improvement in the situation of female

employees as a result of the pay equity exercise, the University backed down and agreed to maintain a salary structure based on single rates of pay for the Trades and Services Group. Since the exercise had revealed gender-based wage disparities and ultimately benefited women, Ms. Parent believed that the maintenance of single rates of pay for the Trades and Services Group was justified, even though this was not solution the University desired. The ultimate goal of the pay equity exercise had been achieved as far as closing the wage gap was concerned.

[87]Ms. Jones of CUPE, for her part, confirmed during her testimony that the Union had always refused to accede to the request that increments be applied to the Trades and Services Group. Instead, the Union wanted all jobs, including those of the Clerical Group, to be assigned single rates of pay, corresponding to the maximum increment in their respective pay scales. The University had consistently denied this request.

[88]Ms. Jones explained that the Union's position with regard to increments was above all a matter of principle. According to the Union, the value of a job corresponds to the maximum rate of pay in a salary scale. Until employees obtain the "real" salary associated with their job, employers save money. In other words, employees are "underpaid" until they reach the maximum rate in their scale. In accordance with this principle, the Union would have liked single rates of pay to be applied to the employees of all job groups.

[89]With regard to the negotiations that led to the July 10, 1996 agreement (Exhibit P-7), Ms. Jones confirmed that the Union had refused the request for applying an increment system to Trades and Services Group employees even though, in practice, none of the employees in this group would have experienced a reduction in salary owing to the individual salary guarantees granted as part of the pay equity exercise. In her opinion, it would have been "suicidal" for the Union to grant such a request.

[90]She said that the Union did not consult Trades and Services Group employees again during the 1995-1996 negotiations to ask them for their opinion on remuneration methods. The Union's position on this matter was clear and had been so since 1992. During consultations held at the time of the university sectoral negotiations, the possibility of applying increments to employees in this group had been excluded because of traditional pay practices in both public and private sectors. This situation was confirmed by expert witness Larouche from the University.

[91]Ms. Jones also said that if the employees of the Trades and Services Group had been told that they would henceforth be subject to increments, they could have concluded that they had been poorly represented by their union, given that, in principle, increment systems represent a step backwards and devalue jobs from psychological, social and cultural standpoints. In other words, according to this witness, an increment system devalues jobs even though it does not have any immediate impact on the salaries of the employees concerned.

[92]Lastly, Ms. Jones said that a representative of the Trades and Services Group was a member of the job evaluation committee as well as the spokesperson for his group during the negotiations and when the agreement was concluded on July 10, 1996. She thus implied that this group was not only consulted at all times but was also party to the decisions made by the

Union.

1.2.5 Effects and consequences of the July 10, 1996 agreement

[93]The Tribunal heard the testimony of a few complainant Clerical Group employees.

[94]Ms. Ferland Pépin has worked for the University since 1974. In 1989, she occupied the position of clerk in the Clerical Group, a job that then belonged to Level 6. Ms. Ferland Pépin had reached the seventh increment in this level, or the maximum rate of pay in her scale. After the job evaluation exercise, her job was assigned to Level 9; however, she was placed at Increment 5 of that level since the increment method of remuneration had been maintained for the Clerical Group and the pay scale integration process took her previous salary rather than her actual experience into account. During the job evaluation and designation exercise, her spouse, who occupied the position of tinsmith in the Trades and Services Group, was placed at the ninth increment of Level 9, since this job was subject to the remuneration method based on single rates of pay (Exhibit P-15). Ms. Ferland Pépin told us, with considerable emotion, that the subject of pay equity was taboo in her house since her job had been reclassified.

[95]Ms. Paradis has occupied the position of secretary in the communications department for over 10 years. This Level-4 job was re-evaluated and placed at Level 9. With her 10 years' work experience, Ms. Paradis had reached the maximum increment of Level 4; however, since she belonged to the Clerical group, she was assigned to Increment 3 of Level 9 (Exhibit P-12).

[96]When Ms. Gagnon testified, she had been working as an internship coordinator for the school of social work for 25 years. This Clerical Group position was reclassified from Level 6 to Level 9. After being at the maximum increment in her pay scale since 1981, Ms. Gagnon was placed at the seventh increment of a nine-increment scale given that she had a Clerical Group job and was therefore not subject to the remuneration method based on single rates of pay (Exhibit P-13). Although her reclassification did not involve a change in duties, Ms. Gagnon said that she once again had to acquire several years of experience in order to obtain the maximum rate of pay in the scale applicable to Level 9. She said that she did not understand how anyone could claim that she, unlike Trades and Services Group employees, had not acquired all the knowledge and skills needed to do her job.

[97]Ms. Rhéaume, for her part, occupied a Level-4 secretary-clerk position. By 1989, she had reached the sixth increment in this level, and by 1990, the seventh and last increment. On November 30, 1995, she still occupied this position and was earning $14.12 an hour.

[98]In January 1996, during the job designation process that marked the beginning of Phase 2 of the pay equity exercise, Ms. Rhéaume received a notice saying that she now occupied the position of managerial secretary, a Level-8 position, and that she had been placed at Increment 5, which entitled her to an hourly wage of $14.97. Since there were eight increments in Level 8, she received a lump sum for the period between December 1, 1989 and November 30, 1995 in accordance with the memorandum of understanding on pay equity (Exhibit P-3).

[99]On June 27, 1996, the University and the Union jointly sent her a notice regarding her [Translation] "final designation as of December 1, 1995", signed by a representative of each of the parties to the negotiations. The notice confirmed that she occupied the position of managerial secretary which, on the basis of the job evaluation exercise, was a Level-8 job.

[100] In August 1996, Ms. Rhéaume read the July 10, 1996 agreement (Exhibit P-7), which had been adopted by the Union members during a general assembly on the previous July 2.

[101] Ms. Rhéaume declared that when she read article VII of the agreement (Exhibit P-7) she noted that her colleagues in the Trades and Services Group had been integrated into the new pay structure on the basis of single rates of pay that corresponded to the maximum increment of their classification.

[102] Using the documents at her disposal concerning the composition of the various job groups, she prepared two other documents, Appendices B1 and B2, which are found in a bundle in Exhibit P-4.

[103] Appendix B1 lists the 30 jobs in the Trades and Services Group and indicates how many men and women occupied such jobs. This document reveals that of the 329 Trades and Services Group employees who did one of the 30 jobs in this group, 275 were men and 54 were women. In other words, 83.65% of the members of the Trades and Services Group were men.

[104] Appendix B2 provides the same information for the Clerical Group. Of the 1 018 employees who had one of the 21 jobs in this group, 875 were women while 143 were men. In other words, women made up 86% of Clerical Group members.

[105] After having noted that the pay equity exercise had led to a situation where Clerical Group members, 86% of whom were women, were subject to increments, while Trades and Services Group members, 83.65% of whom were men, were remunerated according to single rates of pay that corresponded to the maximum rate offered for the job classification concerned, Ms. Rhéaume filed a complaint with the Commission since she believed that women in the Clerical Group were being treated in a discriminatory fashion.

[106] Other employees joined her and soon filed complaints that gave rise to the case at bar.

[107] On September 13, 1996, a pay equity implementation notice (Exhibit P-8) was issued by the Vice-Rector of Human Resources. This notice indicated Ms. Rhéaume's new rate of pay, i.e. $14.97 an hour, which corresponded to the fifth of eight increments in her classification level. This classification had been established by applying the pay scale integration rules provided for in the July 10, 1996 agreement (Exhibit P-7).

[108] Ms. Rhéaume told the Tribunal that she did not reach the last increment in Level 8 until November 20, 1998. However, as she explained, had her job belonged to the Trades and Services Group, she would have received a pay rate equal to the last increment of Level 8 since it would have been the only rate applicable to that group. Moreover, she would have received

the salary associated with this classification, retroactive to December 1, 1995.

2. Applicable law

[109] The right to equality in employment without discrimination based on gender has been enshrined in the *Charter of human rights and freedoms* since 1975. This protection is laid down in sections 16 and 19 of the Charter. Section 16 prohibits discrimination in respect of the various stages of employment relationships and conditions of employment, while section 19 recognizes the principle of equal salary or wages for equivalent work. The inclusion of these rights in the Charter reflects a will expressed on numerous occasions internationally since 1919 to put an end to discrimination in employment conditions, particularly against women.

[110] Before examining the scope of sections 16 and 19 of the Charter, which are two provisions that have not undergone much judicial interpretation by the courts, it would be useful to review equality standards at the international level since the equal pay guarantee laid down in the Charter is in keeping with the principles adopted in international instruments that have been ratified by Québec.

2.1International law

[111] The right to equal pay without discrimination based on gender is enshrined in many international instruments concluded by the United Nations (UN) and the International Labour Organization (ILO), which became a specialized organization of the UN in 1946. A study of these instruments reveals that this guarantee of equality has undergone significant changes over the years, reflecting a will to give effect to this principle, which was elevated to the rank of a fundamental right nearly 50 years ago.

2.1.1 The principle of equal pay for equal work

[112] The equal pay principle is enshrined in article 23 of the *Universal Declaration of Human Rights*,[9] adopted by the United Nations General Assembly in 1948. This article, concerning equality in employment, states that:

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

(Emphasis added)

[113] The recognition of the right to equal pay laid down in article 23 established this guarantee as "a common standard of achievement for all peoples and all nations".[10] The presence of this principle in this basic instrument of reference regarding the recognition and protection of human rights paved the way for the adoption of conventions and covenants of specific scope.

[114] The principle of equal pay for men and women who perform equal work had already been recognized internationally prior to 1948. In fact, this objective has been pursued by the ILO since it was founded in 1919.[11]

[115] Initially included in the Preamble to the Constitution of the ILO, the principle of equal remuneration was reaffirmed in 1944 in the *Declaration of Philadelphia*[12] as a right that could not be achieved without the participation of women. This declaration, which appears in a annex to the ILO Constitution, set forth the aims and purpose of the ILO and the principles that were to guide the domestic policies of member nations, including Canada.

[116] In both the *Universal Declaration of Human Rights* and the Constitution of the ILO, the equal pay principle was based on the concept of equal work and thus offered only a partial solution to the wage discrimination problems encountered by women on the labour market. It was only women who did work that was identical to that performed by men who were able to benefit from the right to equal pay. By failing to deal with the issue of occupational segregation, which was already a well-established feature of the labour market, these instruments provided a form of protection that was basically declaratory in nature.

2.1.1.1 Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value

[117] In 1951, the member nations of the ILO, who were aware of the limits of the right to equal remuneration as formulated at the time, decided to broaden the equal pay principle in order to take labour market realities into account. They adopted the *Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*[13](Convention No. 100), which came into force in Canada in 1973.[14]

[118] As indicated by its title, Convention No. 100 specifically addressed the problem of wage disparities stemming from gender-based discrimination :

Article 1

...

(b) the term "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration established without discrimination based on sex.

Article 2

Each Member shall, by means appropriate to the methods of operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

[119] Under Convention No. 100, the principle of equal pay was now expressed in terms of "equal remuneration for men and women workers for work of equal value".

[120] This formulation was innovative in two respects. First, the principle of equal remuneration specifically addressed the problem of gender discrimination. Second, as laid down, this principle reflected the realities of the labour market. Equality was no longer limited to an identical equation, i.e. equal pay for equal work.

[121] Equality was now expressed in egalitarian terms, i.e. equal pay for different jobs of equal value. For the first time internationally, countries agreed to take appropriate means to deal with wage disparities between men and women who do not necessarily hold identical jobs.

[122] The adoption of this principle laid the basis for equal treatment of men and women and made it possible to tackle the problem of jobs being undervalued because they have been traditionally performed by women.

2.1.1.2 Equal Remuneration Recommendation (No. 90)

[123] Adopted at the same time as Convention No. 100, the *Equal Remuneration Recommendation* (No. 90)[15]presents certain procedures for the progressive application of the general principles set forth in Convention No. 100. ILO recommendations, which are not open for ratification by member States, contain detailed guidelines that supplement the principles enshrined in ILO conventions.

[124] Recommendation No. 90 takes the form of an action plan aimed at achieving equal remuneration for men and women in all sectors of activity in countries that signed Convention No. 100. For example, Recommendation No. 90 proposes that gender-based distinctions be eliminated in establishing minimum wage rates and in the realm of vocational training. In addition, article 5 stipulates that:

Where appropriate for the purpose of facilitating the determination of rates of remuneration in accordance with the principle of equal remuneration for men and women workers for work of equal value, each Member should, in agreement with the employers' and workers' organizations concerned, establish or encourage the establishment of methods for objective appraisal of the work to be performed, whether by job analysis or by other procedures, with a view to providing a classification of jobs without regard to sex; such methods should be applied in accordance with the provisions of Article 2 of the Convention. (Emphasis added)

[125] According to the International Labour Conference, job classification must be impartial if wage rates are to be determined according to the equal remuneration principle laid down in Convention No. 100. The process must involve methods that make it possible to do an objective appraisal of the duties jobs involve.

[126] Convention No. 100 and Recommendation No. 90 marked a turning point in the recognition of the causes of wage discrimination against women. By replacing the principle of "equal pay for equal work" with the less narrow one of "equal remuneration for work of equal value", the ILO acknowledged the systemic basis of wage discrimination stemming from the various components of remuneration systems.

[127] Wage disparities largely reflect social stereotypes and prejudices regarding the value of women's work. Aware of the impact of these prejudices, those in charge of drafting Recommendation No. 90 imposed the following requirement on signatory nations in article 7:

Every effort should be made to promote public understanding of the grounds on which it is considered that the principle of equal remuneration for men and women workers for work of equal value should be implemented.

2.1.2 The principle of equal pay for work of equal value

2.1.2.1 Discrimination (Employment and Occupation) Convention

[128] In 1958, a new instrument was adopted by the International Labour Conference. The *Discrimination (Employment and Occupation) Convention* (No. 111)[16]bound signatory nations to formulate and apply a national policy for the promotion of equality of opportunity and treatment in employment and occupation in order to eliminate any discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin. Broader in scope than Convention No. 100, this new instrument guaranteed equality in a number of areas including access to employment, various occupations and vocational training, and terms and conditions of employment. Canada ratified Convention No. 111 on November 26, 1964.

[129] *Discrimination (Employment and Occupation) Recommendation* (No. 111),[17] which supplements Convention No. 111, reiterated the following guiding principle with regard to equality in employment: women have the right to receive the same remuneration as men for work of equal value.[18]

[130] In 1966, the United Nations General Assembly placed the adoption of an equal remuneration principle on its agenda.

2.1.2.2 International Covenant on Economic, Social and Cultural Rights

[131] The *International Covenant on Economic, Social and Cultural Rights*,[19] which was open for ratification by member States in 1966, recognized the right to equal remuneration for work of equal value:

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (Emphasis added)

[132] The Covenant explained and supplemented the *Universal Declaration of Human Rights*. It bound signatory States, including Canada, to take appropriate steps, including the adoption of legislative measures, to guarantee full exercise of the rights recognized in it,[20] - rights that derive from the inherent dignity of the human person, as stipulated in the Preamble. Québec ratified the Covenant on April 21, 1976, while Canada adhered to it on May 19, 1976.

2.1.2.3 Declaration on the Elimination of Discrimination against Women

[133] Around the same time the above-mentioned Covenant was concluded, the United Nations Commission on the Status of Women, created in 1946, presented a proposal for the adoption of a specific treaty on the elimination of discrimination against women. Although various instruments already guaranteed that all human beings had the right to equality, it seemed essential to draw up such a treaty given that women still suffered considerable discrimination. The Commission's efforts led to the adoption of the *Declaration on the Elimination of Discrimination against Women*[21]in 1967 and of the *International Convention on the Elimination of All Forms of Discrimination Against Women*[22] in 1976. The latter convention was ratified by Canada and Québec in 1981.[23]

[134] The *International Convention on the Elimination of All Forms of Discrimination Against Women* requires that appropriate legislative authorities embody the principle of the equality of men and women in their legislation. In articles 1 and 11(1) (d) of the Convention, this principle is expressed, with regard to remuneration, in terms of equal remuneration for work of equal value:

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and any other field.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

...

(d) The right of equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

[135] The *International Convention on the Elimination of All Forms of Discrimination Against Women* is interesting in that it requires signatory States (art. 5 (a)) to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudice and of customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

[136] The elimination of discrimination against women is viewed from a systemic perspective, reflected by the formulation of the equal remuneration principle in article 11 of the Convention. The various stipulations made in this article illustrate the difficulty of implementing measures aimed at applying this principle. Equal remuneration cannot be achieved without re-evaluating work through an approach that is free of discrimination based on the sex of workers. Article 11 (1) (d) of the Convention invites signatory States to re-evaluate work on the basis of effective equality.

[137] In ratifying the Convention, Canada declared that its appropriate legislative authorities had already applied the concept of equal remuneration as envisaged by paragraph 1 (d) of article 11 by adopting legislation ensuring that wage rates would be set without discrimination based on gender.[24]

[138] The importance of achieving equal remuneration was reiterated in 1995 at the Fourth World Conference on Women in Beijing, which produced the *Beijing Declaration*.***[25]*** This declaration reaffirmed the principles set forth in the *International Convention on the Elimination of All Forms of Discrimination Against Women****[26]*** and initiated implementation strategies.[27] Ensuring that women receive equal pay for equal work or work of equal value was identified as one of the actions to be taken in order to guarantee women's economic rights and independence.[28]

[139] The basic character of the principles set forth in Convention No. 100 and Convention No. 111 was reaffirmed in 1998 in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, adopted by the International Labour Conference. Eliminating discrimination in employment and occupation was one of the four fundamental principles and rights that all members of the organization agreed to respect, promote and realize. In addition, Conventions No. 100 and No. 111 were designated as two of the eight basic conventions of the ILO, and as a result, applying the equal pay principle has become a priority in the 174 member

nations of the organization.

[140] The Tribunal has noted that international law pertaining to equal remuneration has evolved to such an extent that countries no longer have any choice but to give effect to the right of women who work to obtain wages that are exempt from discrimination. The adoption of a definition that makes it possible to compare jobs of equal value held by men and women reflects a general will to address structural inequalities in this area.

[141] The fact that Canada has ratified Conventions No. 100 and No. 111, the *International Covenant on Economic, Social and Cultural Rights* and the *Declaration on the Elimination of Discrimination against Women* is a clear indication of the legislator's intention to adopt principles that comply with these texts. Québec's commitments at the international level reveal a similar intention.

2.1 Internal law

[142] In keeping with its international commitments, Québec adopted the *Charter of human rights and freedoms* in 1975. The Québec legislator decided to tackle the underlying causes of wage discrimination in two separate sections of the Charter. Before we discuss the respective scope of the equality guarantees provided in each section, we must examine the problem targeted by the right to equal remuneration.

2.2.1 Objective pursued by the legislator: the elimination of all forms of discrimination

[143] Essentially, the Charter aims to guarantee full recognition of the right to equality and to the dignity of every human being. More than a simple declaration of principles, it affords effective protection against various forms of discrimination on prohibited grounds such as those listed in section 10.

[144] The right to equality in employment set forth in sections 10 to 19 guarantees that every person's right to equality will be respected. As noted by Cory and Iacobucci JJ., this promise reflects the most cherished dreams and most noble aspirations of our society.

The concept and principle of equality is almost intuitively understood and cherished by all. It is easy to praise these concepts as providing the foundation for a just society which permits every individual to live in dignity and in harmony with all. The difficulty lies in giving real effect to equality.[29]

[145] Provisions granting individual protection must be interpreted so as to give real scope to the right to live and work without allowing this right to be nullified by personal considerations or prejudices and stereotypes associated with certain groups of people. In other words, to attain the objective of the Charter, its provisions must be interpreted in a broad and liberal fashion. In *B.C. (P.S. Empl. Rel. Comm.)* v. *BCGSEU*,***[30]*** McLachlin J. reiterated the dangers of construing them in any other way:

Interpreting human rights legislation primarily in terms of formal equality undermines its promise of substantive equality and prevents consideration of the effects of systemic discrimination, as this Court acknowledged in *Action Travail*.[31]

[146] The Supreme Court of Canada has said on numerous occasions that human rights legislation must be interpreted in a broad and liberal manner that promotes the achievement of the objective contemplated by these laws.[32] It is up to the courts to decide to what extent an individual or group of individuals who suffer discrimination enjoy the same protection as those who are not subject to the discriminatory standard, regardless of the form of discrimination.[33] Heureux-Dubé J. gave similar reasons in *Québec (Commission des droits de la personne et des droits de la jeunesse)* v. *Montréal (Ville de)*.[34] She pointed out that the protection against discrimination afforded by the Charter in the realm of employment must put an end to arbitrary exclusions based on preconceived ideas about personal characteristics.[35]

[147] The right to equality, as guaranteed in sections 16 and 19 of the Charter, must make it possible to address not only the direct effects of discrimination but also its indirect and systemic effects.

[148] In *Action travail des femmes*, the Supreme Court defined the concept of systemic discrimination in an employment context as:

... discrimination that results from the simple operation of established procedures of recruitment, hiring and promotion, none of which is necessarily designed to promote discrimination. The discrimination is then reinforced by the very exclusion of the disadvantaged group because the exclusion fosters the belief, both within and outside the group, that the exclusion is the result of "natural forces", for example, that women "just can't do the job" ... . To combat systemic discrimination, it is essential to create a climate in which both negative practices and negative attitudes can be challenged and discouraged.[36]

[149] Systemic discrimination is based on practices of exclusion, distinction or preference that are complex and therefore hard to identify. This type of discrimination creeps into pay practices and, over time, becomes a "standard" component of job evaluation systems and remuneration methods.

[150] Canadian courts have also made a number of observations on provisions that guarantee equal pay for work of equal value. In general, these decisions examine the prohibition against wage discrimination under section 11 of the *Canadian Human Rights Act****[37]***(hereinafter called the Act) and provide a useful frame of reference for understanding the prohibition against wage discrimination laid down in the Charter.

[151] In *Public Service Alliance of Canada* v. *Department of National Defence*,[38] the Federal Court of Appeal studied for the first time the scope of the principle of equal pay for work of equal value as set forth in the Act. In this case, the employer acknowledged the systemic nature of wages differences between certain male and female employees doing work of equal value.

More precisely, the employer admitted that the job classification system was at the root of the wage gap between men and women. The debate focused solely on whether, given the systemic nature of the discrimination, the wage adjustments should be applied to cover the period prior to the date on which the victims filed the complaint.

[152] In presenting the reasons for his decision, Hugessen J. considered the concept of systemic discrimination within the specific context of equal remuneration. Quoting a Canadian Human Rights Tribunal,[39]he situated the problem of gender-based wage disparities within the realm of systemic discrimination:

... the concept of systemic discrimination, on the other hand, emphasizes the most subtle forms of discrimination, as indicated by the judgment of Dickson C.J. in *CN* v*. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114 at 1138-39. It recognizes that long-standing social and cultural mores carry with them value assumptions that contribute to discrimination in ways that are substantially or entirely hidden and unconscious. Thus, the historical experience that has tended to undervalue the work of women may be perpetuated through assumptions that certain types of work historically performed by women are inherently less valuable than certain types of work historically performed by men.[40] (Emphasis added)

[153] Essentially, the equal pay principle aims to challenge the presumption that certain types of work traditionally entrusted to women naturally have less value than work performed by men - a presumption that contributes to the undervaluation of women's work. It should be noted that not all wages differences are discriminatory per se. The prohibition against discrimination laid down in the various pieces of legislation that guarantee equal remuneration targets only those differences that are based on prohibited grounds such as gender. Hugessen J. has noted that these provisions are aimed basically at resolving the problem of systemic discrimination.[41] He quoted authors Weiner and Gunderson in this regard:

Regardless of what it is called, pay equity is designed to address a kind of systemic discrimination. Systemic discrimination is found in employment systems. It is the unintended byproduct of seemingly neutral policies and practices. However, these policies and practices may well result in an adverse or disparate impact on one group *vis-à-vis* another (e.g., on women versus men). This differs from interpersonal discrimination where one individual discriminates against another. Pay equity requires changes to compensation systems to ensure that women's jobs are not undervalued.[42]

[154] Evans J. of the Federal Court reached the same conclusion in *Canada* v*. Public Service Alliance of Canada*, a decision rendered in 1999.[43]

... the policy motivating the enactment of the principle of equal pay for work of equal value is the elimination from the workplace of sex-based wage discrimination. The kind of discrimination at issue here is systemic in nature: that is, it is the result of the application over time of wage policies and practices that have tended either to ignore or to under-value work typically performed by women.

In order to understand the extent of such discrimination in a particular employment context it is important to be able to view as comprehensively as possible the pay practices and policies of the employer as they affect the wages of men and women.

[155] The right to equal remuneration is aimed basically at addressing sexist biases that make it difficult to obtain a fair appreciation, exempt from systemic discrimination, of work performed by women. From this perspective, an analysis of the various facets of job evaluation and wage determination processes must take into account the objective of the pay equity guarantee enshrined in the Charter: that is, to root out discriminatory biases that lead to undervaluation of jobs held by women.

[156] To apply the principle establishing the right to equal pay for work of equal value, one must implement a job comparison process that makes it possible to identify wage disparities. Since it is jobs of equal value that must receive equal pay, one must first determine which jobs are equivalent. The value attributed to each job will provide the basis for the comparison exercise. In certain laws, the criteria that must be used to evaluate jobs are laid down in the same provision that prohibits wage discrimination. Professor Eliane Vogel-Polsky wrote the following in this regard:

[Translation]

In general, when one examines job evaluation systems, it can be noted that a certain number of laws concerning equal pay for work of equal value provide not only for various compensation components but also for job categories and job classification and promotion criteria, as well as for all the other bases for calculating wages (such as job evaluation methods), which must be the same for workers of both sexes.[44]

[157] It must be noted, however, that the Québec Charter is different in this respect. The legislator decided to deal with the process of establishing job categories and job classifications and with the principle of pay equity in two separate provisions according to who is responsible in each case. Job evaluation systems and methods leading to the attribution of values are contemplated by section 16 of the Charter, while the right to equal salary or wages is enshrined in section 19.

2.2.2 The right to equality in the establishment of job categories or job classifications

[158] Section 16 of the Charter guarantees everyone the right to equality in employment. This provision prohibits discrimination on any of the grounds listed in section 10 of the Charter at all stages of employment as well as in the conditions of employment associated with these stages.

[159] Sections 10 and 16 read as follows:

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy,

sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

16. No one may practice discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.

[160] Rather than opt for a general statement, the legislator adopted a form of protection against discrimination in employment based on a list of the different facets of employment relationships.

[161] This echoes to some extent the protection afforded in the *Act respecting discrimination in employment*,[45]adopted in 1964 and repealed when the Charter was adopted.

[162] In 1975, the legislator considered it necessary to extend the scope of this protection to the establishment of job categories and job classifications relevant to this case.

[163] These two concepts are related to the general idea of grouping and ranking. However, their scope should be examined within the specific context of section 16 of the Charter, which guarantees equality in employment. In addition, although it might be useful to study the generally accepted meaning of these terms, we feel that it would be more appropriate to look at how they are defined in the field of labour relations.

2.2.2.1 Job categories

[164] The *Dictionnaire canadien des relations de travail*[46] does not use the term job category as such. Instead, it proposes a definition for the term "occupational category":

[Translation]

[R]eal, objective, social category formed by a group of people who do the same work, practice the same profession or occupation. A profession or occupation may include a particular work activity (practice of law, teaching, mechanics, etc.) or a group of similar work activities involved in the production of goods or services. Each occupational category situates this group of people in relation to other occupational categories and to society as a whole. The common features shared by all members of an occupational category create

links, and even ties based on common interests and solidarity among these individuals. Such ties may or may not be perceived by the people concerned, and when they are perceived, they may give rise to joint action, the formal organization of the category into a grouping Syn.: Level of position, job grade

or level, craft or trade, profession.[47]

[165] The concept of job category is also used in the *Pay Equity Act*, where it is referred to as "job class".[48]Although the scope of this Act is narrower than that of the Charter, it is interesting to examine the meaning that the legislator has ascribed to this concept in the specific context of pay equity.

[166] The legislator decided not to define the concept. Instead, he discusses it from the angle of a preliminary approach, that is, a process that must be completed before the wages associated with predominantly female job classes and predominantly male job classes can be compared. He specifies that in order to identify job classes, jobs must be grouped according to common characteristics, namely, similar duties or responsibilities, similar required qualifications or even the same remuneration.[49] However, the *Pay Equity Act*, which is based on the negotiation of pay equity or on the responsibility of employers in matters of equal pay, does not elaborate any further on the process of identifying job classes and affords considerable latitude in this regard.

[167] Based on the above, the concept of job category refers essentially to the act of grouping together people who do the same type of work or carry out the same or similar professional or work activities. This approach is interesting in that it groups jobs which share a significant number of characteristics regardless of their title. Job categories are usually established on the basis of work performed within the scope of a job, required qualifications or material, functional or organizational responsibilities, supplemented in some cases by other criteria. This is not an exercise aimed at determining the value of jobs but a procedure that makes it possible to group similar jobs together. Job categories are generally established for work organization purposes within an enterprise.

[168] Without claiming to provide an exhaustive list, it can be said that factors such as required training, necessary qualifications and pertinent experience - established according to the complexity of tasks, degree of autonomy, level of supervision and communication skills needed to perform specific duties - are used to group jobs for the purpose of establishing job categories.

2.2.2.2 Job classifications

[169] Dion defines the term classification as:

[Translation]

[d]istribution by classes or categories. In other words, classification establishes standards for the effective classification of people or objects.[50] (Emphasis added)

[170] As for job classification strictly speaking, he defines it as:

[Translation]

Distribution of jobs by grade or classification level.

Syn.- position classification; job grading; functional classification.[51]

[171] Job classification thus refers to a procedure for evaluating jobs and systematically organizing them in decreasing order of value. To classify jobs, various standards, factors or criteria, such as physical or mental effort, muscle coordination, dexterity, judgment and so forth, must be established and adopted. Jobs or job categories must then be evaluated on the basis of these standards, factors or criteria, as well as according to the quantitative parameters attributed to these three elements.

[172] This method makes it possible to rank jobs according to their relative worth, which may ultimately serve as the basis for setting wages. This is one of the reasons why this method is often associated with the principle of equal pay for work of equal value.

[173] This phenomenon is clearly illustrated in article 1(2) of Directive 75/117/EEC[52] of the Council of the European Communities:

Art. 1(2). In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.[53] (Emphasis added).

[174] This provision is in keeping with article 5 of ILO Recommendation No. 90, which invites member States to establish and apply objective job evaluation methods that are exempt from discrimination:

Art. 5. Where appropriate for the purpose of facilitating the determination of rates of remuneration in accordance with the principle of equal remuneration for men and women workers for work of equal value, each Member should, in agreement with the employers' and workers' organisations concerned, establish or encourage the establishment of methods for objective appraisal of the work to be performed, whether by job analysis or by other procedures, with a view to providing a classification of jobs without regard to sex; such methods should be applied in accordance with the provisions of Article 2 of the Convention.

[175] Although the purpose of a job classification system is not necessarily to set wages, establishing such a system is inevitably a crucial step in this process, as demonstrated by the above-mentioned provisions of instruments aimed at achieving equal pay for work of equal value.

[176] In Québec, the duty to ensure equality in establishing job categories and job classifications is not limited to the realm of pay equity. Regardless of the aim of the exercise, any grouping of jobs by category or classification must be exempt from discrimination, not only with respect to the criteria selected but also the value attributed to each criterion.

[177] It is important that those responsible for establishing job categories and job classifications adopt a procedure that is not marked by sexist prejudices and stereotypes. A classification system will be deemed to comply with section 16 of the Charter only if its design and application are not based on discriminatory considerations and are unlikely to have discriminatory effects.

[178] Any job evaluation or classification system, be it the product of a decision made by an employer or of negotiations with a union, must meet the above-mentioned equality requirement. Otherwise, it will be considered not to comply with section 16 the Charter, which stipulates that every person must ensure that the results of such a system uphold the guarantee of equality.

2.2.3 The right to equal salary or wages for equivalent work

[179] The Charter clearly stipulates that everyone has the right to equality in employment and to equal remuneration for equivalent work without discrimination based on such grounds as sex. According to section 19:

19. Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.

A difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel.

[180] A new paragraph was added to section 19 when the *Pay Equity Act* was adopted in 1997. It does not apply, however, in the present case:

Adjustments in compensation and a pay equity plan are deemed not to discriminate on the basis of gender if they are established in accordance with the Pay Equity Act (chapter E-12.001).

[181] Section 128 of the *Pay Equity Act* deals with the issue of complaints based on section 19 of the Charter and filed with the Commission des droits de la personne et des droits de la jeunesse before November 21, 1997.

Section 128 Complaints concerning discrimination in compensation on the basis of gender in violation of section 19 of the Charter of human rights and freedoms (chapter C-12) filed with the Commission des droits de la personne et des droits de la jeunesse before November 21, 1997 shall be examined and disposed of in accordance with the provisions of the Charter that were applicable at that time.

[182] The legislator has clearly indicated that it is up to the Commission to continue examining complaints based on section 19 of the Charter, if such complaints were filed prior to the coming into force of the *Pay Equity Act*. If the Commission decides to appeal to the Tribunal for remedial measures in accordance with the provisions of the Charter, the Tribunal has the authority to hear the case irregardless of the *Pay Equity Act*.

[183] Paragraph 56 (2) of the Charter specifies that the terms salary and wages "include the compensations or benefits of pecuniary value connected with the employment".[54]

[184] Sections 19 and 128 and paragraph 56 (2) are thus the provisions of the Charter that deal with the question of equal remuneration.

[185] Section 19 expressly guarantees equal salary or wages for equivalent work. It prohibits employers from paying different wages or offering different salaries on any of the grounds listed in section 10 of the Charter to members of their staff who perform equivalent work. Essentially, this provision establishes the principle of equal remuneration for men and women who do equivalent work.

[186] It is important to emphasize the term equivalent found in section 19 of the Charter. This specification broadens the scope of this provision and thereby makes it possible to deal with the real causes of wage discrimination. It also sets the parameters for the comparative exercise on which the equal pay guarantee is based and determines the scope of its results.

[187] The legislator recognized certain exceptions to the principle of equal wages for equivalent work as long as these exceptions apply equally to all employees. In accordance with the second paragraph of section 19 of the Charter, wage practices that generate differences in pay between men and women are discriminatory unless they are justified by experience, seniority, years of service, merit, productivity or overtime and unless these criteria are applied to all staff members. However, in the case at bar, it is not necessary to examine the scope of this paragraph since the parties did not raise the issue of justification.

[188] The provision pertaining to the right to receive equal wages for equivalent work without discrimination based on sex has been an integral part of the Charter for the past 25 years. Nevertheless, it has not given rise to a great deal of jurisprudence, much less in-depth examination of its scope.

[189] In *Québec (Ville de)* v. *Commission des droits de la personne du Québec*,[55] the majority of the Court of Appeal explained the purpose of this provision as follows:

[Translation]

When section 19 talks about equal wages for equivalent work, it lays down one of the rights that the Charter is intended to guarantee. This right is in keeping with the struggle for equal remuneration at work, which in turn is an integral part of the more global struggle for social and economic equality.

[190] This comment by Nichols J. evokes the context in which the Charter was drafted: this instrument was adopted a few months before Québec ratified the *International Covenant on Economic, Social and Cultural Rights*, aimed precisely at addressing social, economic and cultural inequalities.

[191] By opting for the principle of equal wages for equivalent work rather than for a more restrictive formulation, Québec complied with the commitment it was about to make at the international level, given that article 7 of the Convenant recognized women's right to equal remuneration for work of equal value without discrimination. This formulation takes into account the historic cleavage between male and female jobs on the labour market. Since this right had to become a reality for the right to equality to be effective, the adoption of section 19 was a means of ensuring that the right to equal pay could be fully exercised. Like article 7 of the Convention and article 11 of the *International Convention on the Elimination of All Forms of Discrimination Against Women*,[56] section 19 of the Charter is based on the exhaustive nature of the job evaluation exercise and on the goal of this process, which is to ensure the right to receive equal wages for equivalent work.

[192] The right to equality laid down in section 19 is based on the model of substantive equality rather than on the narrower one of formal equality, a conclusion drawn from the presence of the concept of *equivalence*. As stated by the Supreme Court of Canada in *Andrews* [57]more than 10 years later, this principle has to go beyond identity of treatment owing to the substantive nature of the equality.

It is a comparative concept, the condition of which may only be attained or discerned by comparison with the condition of others in the social and political setting in which the question arises. It must be recognized at once, however, that every difference in treatment between individuals under the law will not necessarily result in inequality and, as well, that identical treatment may frequently produce serious inequality, This proposition has found frequent expression in the literature on the subject but, as I have noted on a previous occasion, nowhere more aptly than in the well-known words of Frankfurter J. in *Dennis* v. *United States*, 339 U.S. 162 (1950), at p. 184:

It was a wise man who said that there is no greater inequality than the equal treatment of unequals.

[193] The right to equal wages laid down in section 19 transcends formal equality. It implies more than the mere prohibition of paying some people less than others for identical work. By basing the right to equality on equivalent rather than identical jobs or work, the Québec legislator integrated the prohibition against discrimination into a job evaluation-comparison process based on the principle of equal value. This approach also called into question the practice of occupational segregation, which leads to men and women being concentrated in different jobs and to women's work being generally undervalued compared with that of men.

[194] In *Syndicat des employés de production du Québec et de l'Acadie* v. *Canada (Canadian Human Rights Commission*),[58]L'Heureux-Dubé J. stated that provisions which guarantee equal pay should be interpreted broadly. It should be pointed out that the issue before the Supreme Court consisted in determining whether the Federal Court of Appeal could examine the dismissal of a complaint based on paragraph 36(3) (b) of the *Canadian Human Rights Act* by the Canadian Human Rights Commission. The majority of the Supreme Court decided that the Federal Court of Appeal could not examine a decision of the Canadian Commission and

terminated the examination.

[195] L'Heureux-Dubé J., who dissented on the question of the Federal Court of Appeal's authority to examine the decision, discussed the concept of equal pay. She noted the many difficulties involved in applying the right to equal remuneration for jobs of equal value. In this regard, she said that defining the concept of value can be particularly complex.[59] L'Heureux-Dubé J. also pointed out the special nature of the right to equal pay.

... Section 11, however, differs from ss. 7 and 10. Its scope of protection is delineated by the concept of "equal value". That provision does not prevent the employer from remunerating differently jobs which are not "equal" in value. Wage discrimination, in the context of that specific provision, is premised on the equal worth of the work performed by men and women in the same establishment. Accordingly, to be successful, a claim brought under s. 11 must establish the equality of the work for which a discriminatory wage differential is alleged. [60]

[196] These comments by L'Heureux-Dubé J. are in keeping with section 11 of the *Canadian Human Rights Act*, which differs from section 19 of the Charter in several respects. Nevertheless, her remarks are still pertinent within the context of the Charter.

[197] Indeed, numerous difficulties can arise during the development and implementation of an exercise aimed at achieving equal remuneration. The right at issue here requires that all job evaluation methods and practices as well the effects and consequences of compensation systems adhere to the principle of non-discrimination. Evaluating jobs and classifying them for wage comparison purposes play a decisive role in determining whether differences exist between the wages offered for jobs held by women and those offered for jobs held by men.

[198] To begin with, the right to remuneration exempt from discrimination is based on an evaluation process that does not disregard the essential characteristics of women's work and that attributes a value to them that is free of sexist prejudices. As Nichols J. noted in *Ville de Québec*, this guaranteed right will be violated only if the employer fails to respect it by engaging in discriminatory practices.***[61]***

[199] He also said the following with regard to the scope of protection afforded by section 19 of the Charter:

[Translation]

... one must be careful not to immediately jump to the conclusion that discrimination exists every time staff members of a given employer do not receive equal wages for equivalent work.

Another element is needed to conclude that inequality constitutes discrimination.

Section 19 begins with the words: "Every employer must, without *discrimination*, grant equal salary..." (My emphasis).

If an employer does not grant equal wages for equivalent work, this guaranteed right will be violated only if the employer is acting on discriminatory grounds.[62]

[200] Although section 19 of the Charter is aimed at eliminating systemic discrimination, this is not its sole purpose. A women who is paid less than a male colleague even though they both do exactly the same work may invoke this section to put an end to this situation. However, owing to its scope, section 19 can also be used to address more subtle, less visible forms of discrimination.

[201] While section 19 of the Charter does not specify what methods should be used to establish which jobs are equivalent, it presupposes that the value of jobs will be determined and that the wages offered for jobs of equal value will be compared. It differs in this regard from section 11 (2) of the *Canadian Human Rights Act*, which stipulates the four factors that must be used to determine whether jobs are of equal value, namely, skill, effort, responsibility and working conditions. The right laid down in section 19 of the Charter is that of obtaining a salary which is not marked by prejudices or stereotypes that have a discriminatory effect by undervaluing work performed by women, regardless of the factors used to determine the value of such work.

[202] The comparison exercise that determines which jobs are equivalent must allow the employees concerned to receive the same salary. Any pay practice or compensation system that engenders wage disparities among employees who do jobs of equal value inevitably contravenes section 19 of the Charter. In short, the exercise must lead to the elimination of practices or structures, be they are negotiated or not, which are based on social or cultural mores that help to create discrimination.

[203] Section 19 aims essentially to redress differences in pay that stem from systemic discrimination, particularly between men and women. This form of discrimination is based on practices and systems which, although not originally intended to adversely affect the wages paid to women compared with those paid to men, have had such an effect for many years. To achieve equal remuneration without discrimination based on sex, all practices that have an adverse effect on women's wages must be replaced. Otherwise, such discrimination will persist.

[204] The Charter allows employers considerable latitude in the methods they choose for determining the value of jobs. They may opt for a job evaluation plan based on the establishment of job categories and the classification of jobs within the meaning of section 16, or they may decide to use less formal methods. In either case, they must ensure that each stage in the job evaluation and comparison process is exempt from discrimination and that, ultimately, employees who have jobs of equal value are paid equal wages.

[205] In fact, section 19 of the Charter requires that the following result be achieved: women must receive the same wages as men for equivalent work. Therefore, if after conducting a job evaluation and comparison exercise that is free of discrimination an employer continues to apply a compensation or salary administration system that has discriminatory effects based on the sex of his employees, he would contravene section 19 of the Charter.

[206] All of the stages involved in applying a compensation system are subject to this provision, that is, not only the determination of salaries by job or job category but also remuneration methods, the allocation of specific salaries to individual jobs and the salary progression method applicable to individuals within an organization.

[207] Using remuneration methods that generate wage disparities for men and women who do jobs of equal value would contravene section 19 even if an employer does not intend to discriminate. Indeed, it would be difficult to conclude that two equivalent jobs receive equal wages if, for a number of years, the people who perform them do not earn the same salary.

[208] At this stage, it is important to note that union-employer negotiations at the various stages of a pay equity exercise cannot be conducted in a discriminatory manner. An agreement that legitimizes a discriminatory practice cannot be considered justified merely because the parties to the agreement have decided that this is the case. As the Supreme Court pointed out in *Renaud*, all agreements, be they in the form of contracts or collective agreements, must comply with the requirements stipulated in the legislation:

... any person who discriminates is subject to the sanctions which the Act provides. By definition (s. 1) a union is a person. Accordingly, a union which causes or contributes to the discriminatory effect incurs liability.[63]

[209] However, a union cannot be found liable unless it has the same obligations as an employer under the provisions concerned. This is not the case under section 19 of the Charter, where only employers can be held liable for discriminatory wage differences. Décary J. of the Federal Court of Appeal examined this question in *Bell Canada* v. *CEP**[64]* within the context of section 11 of *the Canadian Human Rights Act*.

... For reasons of its own Parliament has chosen, in section 11, to make the employer alone liable for differences in wages with respect to work of equal value. It would fly in the face of the clear wording of the Act and the obvious intent of Parliament to find the unions equally liable either implicitly under section 11 or indirectly through sections such as section 10 for having participated in the establishment of different wages with respect to work of equal value.[65]

[210] Similarly, under section 19 of the Charter, employers alone are responsible for granting equal wages to employees who do equivalent work. It is up to them, and them alone, to ensure, in accordance with the terms of this provision, that men and women who have jobs which are deemed equivalent receive equal wages, unless differences in pay are justified on the basis of one of the exceptions stipulated in the second paragraph of section 19.

[211] The situation is different, however, with regard to the establishment of job categories or job classifications pursuant to section 16 of the Charter. Under this provision, the legislator requires that every person uphold the right to equality without discrimination in respect of the employment procedures or conditions of employment listed in this section.

2.2.4 Moral damages

[212] The Commission is claiming moral damages for interference with each of the complainants' and victims' right to equality.

[213] Section 49 of the Charter stipulates that:

49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to exemplary damages.

[214] Three types of damages may therefore be claimed: material, moral or exemplary. Under section 49 of the Charter, any person who has suffered unlawful interference with a fundamental right or freedom is entitled to full compensation for the wrong he has sustained. Accordingly, the damages awarded following the violation of a right recognized by the Charter are of a strictly compensatory nature, as is the case of the moral damages. Consequently, the prejudice alleged in the application must be proven.

[215] In *Aubry* v. *Vice-Versa*,***[66]*** L'Heureux-Dubé and Bastarache JJ. pointed out this obligation of the plaintiff.

Nonetheless, it was necessary for the respondent to establish that she had suffered prejudice. Such prejudice may be extrapatrimonial and/or patrimonial.

Where extrapatrimonial damages are concerned, we agree with Baudoin J.A. that the infringement of a right guaranteed by the Québec *Charter* is in itself insufficient to establish that damage has been sustained. ...[67]

[216] Although he dissented on the outcome of the appeal, Lamer J., who was then Chief Justice, subscribed to this principle. He specified that the mere violation of a right recognized by the Charter is not automatically compensable.[68]

[217] It must be noted, therefore, that the mere allegation that a right has been interfered with or that the full and equal exercise of a right has been denied is not in itself sufficient to prove that moral prejudice exists. Real, personal prejudice must be demonstrated.

[218] However, what does proof of moral prejudice consist of in litigations resulting from discriminatory practices of a systemic nature? More simply, does the plaintiff have to call all the persons alleging moral damage to testify in order to prove the existence of the prejudice suffered by each of the victims claiming compensation?

[219] In *Québec (Public Curator)* v. *Syndicat national des employés de l'hôpital St-Ferdinand*, [69] the Supreme Court examined the conditions required to award moral damages. The union claimed that patients of Hôpital St-Ferdinand could not receive the compensation for moral prejudice granted by the trial judge because they could not experience satisfaction or dissatisfaction on account of their mental condition. The Supreme Court dismissed such an assessment.

[220] In discussing the nature of moral damages in the reasons she wrote for the Court, L'Heureux-Dubé J. ruled out a purely subjective conception of not only the justification of the right to compensation for moral damage but also the calculation of this type of damage. Instead, the Court opted for an assessment based on the material form of the prejudice.

[221] L'Heureux-Dubé J. specified that such a conception does not exclude the subjective concept of moral prejudice. Quoting Professor J. D. Jutras, the justice disposed of this question by stating that its essence lies:

... in the recognition of the existence of objective extra-patrimonial prejudice independent of the suffering or loss of enjoyment of life felt by the victim. From this perspective, the prejudice is composed not only of the victim's perception of his or her condition, but also of that condition itself.[70]

[222] As for the calculation of moral damages, the Supreme Court specified that courts must take into account both the value of the damage for the victim (subjective) and the purely objective value of the infringement of the right guaranteed by the Charter. In addition, the evaluation of compensation must make it possible to improve the victim's situation, taking his or her condition into consideration (functional method).

[223] On the basis of the Supreme Court's analysis, it is clear that proof of moral damage is not limited to victims' sole appreciation of the moral prejudice resulting from violation of their right. Proof based on the facts that gave rise to the prejudice and on the tangible, visible nature of the prejudice entailed can give rise to compensation for the consequent moral damage. In the Hôpital St-Ferdinand case, the proof was not based on the testimony of the patients. The main elements of proof before the trial judge came from the testimony of people who had replaced the striking employees and from that of expert witnesses.

[224] In light of this decision by the Supreme Court, it is clear that when the effects and consequences of interference with the right to equality affect a large number of victims in a similar way, evidence based on a demonstration and analysis of the effects and consequences of such interference may be received, without it being necessary for the victims themselves to give testimony in this regard.

[225] An analysis aimed at determining the moral damages resulting from discriminatory practices of a systemic nature can be based on evidence provided by experts who describe the impact of such practices on the victims. Of course, such evidence must always have a probative personal character if it is to lead to the awarding of compensation. Impressionistic evidence

would not suffice to convince a court of the adverse effects of discriminatory practices on a given group. The awarding of moral damages is intended to compensate for the depreciation, humiliation and feelings of rejection, betrayal or frustration experienced by victims of discriminatory acts. Whether evidence is provided by experts, third parties or the victims themselves, a court will award moral damages only if it has obtained clear proof of the humiliation or other negative feelings resulting from the discrimination.

3 Application of the law to the facts in the present case

[226] This case raises two questions:

1. Did Université Laval discriminate against its Clerical Group employees during the 1995-1996 pay equity exercise by establishing job categories or job classifications in contravention of section 16 of the Charter? If so, can the Union be held liable for such discrimination?

2. Did Université Laval discriminate against its Clerical Group employees during the 1995-1996 pay equity exercise by comparing salaries or establishing remuneration methods in contravention of section 19 of the Charter? If so, can the Union be held liable for such discrimination?

[227] Before answering these questions, the expert opinions submitted to the Tribunal by the parties should be presented and disposed of.

3.1 Expert opinions

[228] The Tribunal received reports from and heard the testimony of experts Marie-Thérèse Chicha, professor at the school of industrial relations of the Université de Montréal, and Léopold Larouche, management consultant for Gestion-conseil LORAN Inc.

[229] Ms. Chicha focused her testimony on an analysis of the dual pay structure at issue in this case and on its effects with regard to pay equity. She asked the following question: Does the dual pay structure discussed above ensure that female-dominated jobs in the Clerical Group receive the same pay as male-dominated jobs of equal value in the Trades and Services Group?

[230] She explained that to answer this question, it must first be understood that a pay policy may be based on two separate elements, namely, job content and the individual characteristics of job holders or incumbents. A salary structure or method of remuneration involving single rates of pay is based solely on the value of jobs, while an increment structure takes the personal characteristics of incumbents into account.

[231] According to her analysis of the present case, the job evaluation-comparison exercise was aimed at determining the value of each job irrespective of the personal characteristics of the employees concerned. She examined the factors used to evaluate the various jobs and concluded, on the basis of the job descriptions presented, that the exercise took not only experience and required training into account but also the complexity of jobs. She also said that

in determining methods of remuneration, the parties considered a personal characteristic, which she identified as seniority, in the case of female Clerical Group employees. In her opinion, this explains why this group was assigned a remuneration method based on pay scales, according to which a person obtains the real salary associated with a job only after a certain number of years of service.

[232] For her, the most plausible explanation for this choice is that incumbents have to gradually adjust to the specific requirements of the organizational context. Employees need a few years to adapt to the specific procedures, rules and practices of the university setting. She noted, however, that this is also the case of Trades and Services Group employees.

[233] She concluded her analysis by saying that [Translation] "in the case under study, the dual pay structure does not ensure that predominantly female jobs receive the same pay as predominantly male jobs of equal value".

[234] Based on the expert testimony offered by Ms. Chicha, the Tribunal concludes that, for the purpose of setting wages that are exempt from discrimination within the meaning of section 19 of the Charter, the employer must chose a method of remuneration that complies with the evaluation-comparison criteria that were used to determine which jobs are equivalent and that this method must be applied to both the Clerical Group and the Trades and Services Group.

[235] The expert report submitted by Mr. Larouche focuses to a larger extent on the pay equity exercise as a whole in the light of the complaint filed with the Commission. He examined the situation that prevailed prior to this exercise using the collective agreement, and then gave his opinion on three points: the pay scale integration rule, the dual pay structure and the vexatious nature of the integration rule.

[236] The last few chapters of his expert report present an analysis, supplemented by appendices, of the various phases of a pay equity exercise. Mr. Larouche suggested that the Tribunal study this analysis using the pay equity laws and regulations in effect in Québec and Ontario. The Tribunal does not accept this part of his report since it is not responsible for determining whether the exercise at issue here complies with these laws or regulations. Nor does it see the pertinence of doing so given that the issue in this case is to determine whether the complainants' right to equality has been violated or, in other words, whether they have suffered discriminatory treatment on the basis of gender.

[237] In Chapter 2 of his report, Mr. Larouche described the compensation systems in effect at the University for the Trades and Services Group, the Clerical Group and the Technical Group before and after the pay equity exercise. He said that he discussed the Technical Group in this chapter because of its particular make-up - predominantly male, like the Trades and Services Group - and particular pay structure - based on increments, like that of the Clerical Group - and because of the impact this category might have on the Tribunal's decision.

[238] In this regard, the Tribunal notes that, nowhere in his report or testimony, did Mr. Larouche consider that these three job groups are of equal value. Furthermore, an examination

of Appendices C and D[71]leads to the conclusion that the Technical Group is not equivalent to the two others: during the job evaluation process, all Technical Group jobs obtained scores of between 482 and 670 points, while Clerical Group and Trades and Services Group jobs obtained between 239 and 481 points.

[239] In accordance with the Charter, job evaluation-salary comparison exercises must only focus on jobs deemed of equal value, which, within the scope of the University's pay equity exercise, means jobs in the Clerical and Trades and Services groups. Therefore, the Tribunal does not see how a decision pertaining to equivalent jobs in these groups could affect the Technical Group. Contrary to what emerges from his report, Mr. Larouche recognized in his testimony that the aim of the pay equity exercise, in the case of Technical Group jobs, was to match the salaries of such jobs with those of similar ones in the Québec civil service. Therefore, the Tribunal does not accept the expert's approach.

[240] Mr. Larouche also noted in Chapter 2 that differences were maintained in salary determination systems and rules despite the fact that a single job evaluation system was used to identify equivalent jobs. He noted that an increment system was applied to the Clerical Group, while a single-pay-rate system was applied to the Trades and Services Group - groups that were deemed to be of equal value. Mr. Larouche acknowledged that the agreement perpetuated a dual pay structure for these two groups

[241] However, he pointed out a change, which he qualified as significant, in the principles underpinning the pay structure of the Trades and Services Group. This change involved the abolition of the apprenticeship system.

[242] Mr. Larouche explained that, prior to 1996, Trades and Services Group employees could be paid at lower rates. On reading Appendix C-2 concerning special provisions pertaining to apprenticeships, the Tribunal noted that such lower rates were applied only to apprentices in training and only while employees completed an apprenticeship in order to acquire the skills associated with the trade they wished to practice.

[243] As demonstrated by the pertinent provisions, such rates did not correspond to increments, but to rates of pay for the trade concerned reduced by a set percentage. However, these reduced rates were increased periodically and reached 80% to 85% of the full pay rate in the last year of the employee's apprenticeship. Apprentices received reduced rates of pay because they did not have the skills required to hold the jobs targeted by the training. The apprenticeship program applied only to "trades" jobs in the Trades and Services Group; "service" jobs were excluded.

[244] In any case, the possibility of offering reduced rates of pay was never considered in the job classification exercise nor in determining the rates of pay applicable to the various jobs. Therefore, the only pertinent issue here is job entry since the comparison focused only on jobs that were fully exercised, or jobs that required certain previously acquired skills.

[245] Prior to the pay equity agreement, the prerequisites for obtaining a trades position or

performing a trades job in the Trades and Services group were competency cards and, in some instances, experience, and this was still the case after the agreement was implemented.

[246] In light of the explanations provided by Mr. Larouche and the information contained in Appendix C-2, the Tribunal considers that the question of the apprenticeship system is not relevant to the present debate.

[247] In the conclusion of Chapter 2, Mr. Larouche pointed out that none of the decisions stemming from the 1996 agreement refer to sex as a distinctive characteristic. In his testimony, he explained that a decision implies a change to or modification of a previous system. In the case at bar, since nothing was done to modify the coexistence of a single-pay-rate structure and an increment structure, Mr. Larouche acknowledged that he did not discuss the discriminatory effect or consider the potential impact of maintaining a dual pay structure. Therefore, this conclusion of his report does not apply to the questions submitted to the Tribunal.

[248] Chapter 3 of Mr. Larouche's report examines the problems raised by the complaint. According to Mr. Larouche, the complaint filed with the Commission deals essentially with the pay scale integration rules applied, which, in his opinion, correspond to the normal integration procedure and were thus free of sexist bias. In his opinion, they merely constituted measures for making the transition between the old and new systems, and were thus a necessary administrative procedure that entailed only a temporary disadvantage for employees subject to an increment system relative to those subject to a system based on single rates of pay.

[249] Mr. Larouche insisted on the temporary, non-recurring nature of the undesirable effects of an integration rule which, as in the case of Université Laval, is based on a dual pay structure. Wage disparities exist for the time it takes employees to reach the maximum in their pay scale, which, in the case of Clerical Group employees, corresponds not only to the period when they were being reclassified but also to the time they are being promoted. However, as he noted during his testimony, an increment structure must already exist for a pay scale integration rule to have undesirable effects. He also specified that it was the employees in the Clerical Group who suffered such effects and not those in the Trades and Services Group.

[250] The Tribunal noted that Mr. Larouche, in assessing the basis of the complaint, ignored the fact that the parties revealed their decision to maintain the dual pay structure only in article VII (pertaining to integration rules) of the memorandum of understanding on the implementation of the new compensation system within the scope of the pay equity exercise. Nowhere else in any of the documents concerning this exercise did they discuss or provide for the maintenance of a remuneration method based on single rates of pay for the Trades and Services Group and of one based on pay scales for the Clerical Group.

[251] Therefore, the complainants only felt the effects and consequences of the pay equity exercise once the rule was applied - a fact which demonstrates that this rule was much more than a simple administrative, transitional, salary administration rule. Therefore, the Tribunal does not accept Mr. Larouche's opinion in this regard.

[252] In Chapter 4 of his report, Mr. Larouche discussed the nature of the two different types of pay structure. Asked to give his opinion on the raison d'être of an increment structure, he said that this type of structure is based on recognition of experience rather than seniority. However, Mr. Larouche acknowledged that the experience evaluated by the job evaluation system during the pay equity exercise was experience required to carry out job duties. Therefore, Mr. Larouche told us that, in the case at bar, the evaluation system used was not compatible with an increment system.

[253] He noted that for the evaluation process to be compatible with an increment system it should have considered experience as a factor that evolves over time, until employees acquire the total amount needed to reach the top of the maturity scale. However, this was not the case. As Mr. Larouche pointed out, all jobs were evaluated on the basis of maximum job maturity. Experience, like required training, is one of the factors that was already measured in determining the value of jobs, a situation that prompted him to say that the evaluation system used does not justify the existence of a dual pay structure.

[254] In addition, nowhere in his report did Mr. Larouche question the merits of the dual pay structure. At the very most, he said that it reflected traditional pay practices applied for many years in all sectors of activity within the working world. He suggested that abolishing either practice by virtue of the right to equality would have major repercussions on the administration of salaries and wages.

[255] Nevertheless, in the conclusion of his report, Mr. Larouche came out in favour of bringing the increment structure into general use since any other solution would entail enormous, dysfunctional and overly costly consequences. In his opinion, applying this system to the Trades and Services Group would be the solution best adapted to the reality of trades jobs in institutional settings.

[256] As for his assessment of what he calls the vexatious nature of the pay scale integration rule denounced in the complaint filed with the Commission, the Tribunal can simply note that Mr. Larouche seems to be completely unaware that the present case does not concern the pertinence of the administrative mechanisms used for administrative purposes, but the right to treatment exempt from gender discrimination.

[257] In short, the expert opinions submitted to the Tribunal have allowed it to better comprehend the context of the pay equity exercise and some of the more administrative aspects of applying these principles to the situation at issue. However, to understand the specific facts of the case before it, the Tribunal has depended more on a direct study of the evidence submitted by the various parties.

3.2 Compliance of the job classification and evaluation procedure

[258] Several steps must be taken to ensure that people who perform jobs of equal value receive equal pay. First, jobs must be evaluated, grouped and classified according to their value pursuant to section 16 of the Charter. The salaries actually associated with these jobs must then

be compared, taking their incumbents into account. Section 19 of the Charter comes into play during salary comparison exercises.

[259] The Tribunal concedes that it is not always essential to establish job categories in a pay equity exercise. However, this process can serve to pinpoint the specific characteristics on which groupings are based and which can be used to identify evaluation factors. For example, jobs grouped together because they are qualified as manual positions may involve working conditions that require muscle coordination or physical effort, while jobs qualified as clerical positions may require dexterity and mental effort.

[260] When an employer decides on his own initiative or in conjunction with workers representatives to group jobs into categories, he must ensure that none of the elements used is discriminatory or produces discriminatory effects. Regardless of whether these job categories are based on one or more characteristics relating to work organization, type of activities, required qualifications or level of responsibility, these groupings must not interfere with incumbents' right to equality.

[261] In the case at bar, the University and the Union decided to use already existing job categories during the pay equity exercise rather than establish new ones. They chose the three categories included in the collective agreement, namely, the Clerical Group, the Trades and Services Group and the Technical Group.

[262] When these categories are examined in light of the definition given in the *Dictionnaire canadien des relations du travail*, it is rather difficult to identify a characteristic that is common to all jobs in the "Trades and Services Group", other than the fact that they are all basically manual positions. In fact, only around 15 are construction jobs, while the remainder, i.e. three quarters, correspond to a range of jobs that are performed just about anywhere on the University campus and that do not require, except in a few cases, any particular training. Similarly, the Clerical Group includes a number of relatively different jobs, whose common denominator is that they are not manual in the sense traditionally ascribed to this word. The positions that correspond to these jobs are attached to or located in administrative units or departments and include duties required by these units or departments. In short, only the Technical Group constitutes a category based on a common characteristic, in that all the jobs included in this group require specialized training.

[263] The Tribunal can simply note that the first two categories merely perpetuate the historic segregation of manual jobs traditionally held by men and administrative support jobs traditionally held by women. Indeed, the evidence demonstrates that 83.65% of jobs in the first category are occupied by men, while 86% of those in the second category are occupied by women. Nevertheless, to the extent that these groupings per se do not create discriminatory barriers between men and women, the Tribunal acknowledges the existence of these categories and notes that they may serve as the basis for the type of salary comparison exercise contemplated by section 19 of the Charter.

[264] However, establishing job categories is not all that must be done to determine whether jobs are equivalent within the meaning of section 19. This process does not involve evaluating

jobs or classifying them according to the value attributed to them. Instead, job evaluation and ranking according to value occurs during the job classification process, which, therefore, is the decisive step in an exercise aimed at determining which jobs are equivalent.

[265] The job classification process comprises several steps, all of which are equally important. The first step consists in drawing up an evaluation protocol which includes a list of factors that are free of discrimination in regard not only to the way they are enumerated but also to the values and weighting ascribed to each one. The protocol must also include a process for examining jobs and job duties which respects the right to equality, that is, which does not perpetuate sociocultural prejudices or stereotypes that are structurally embedded in the organization of the labour market, the organization of work itself and the distribution of jobs among men and women. In general, the job classification process generates job descriptions that include the elements needed to evaluate jobs according to the factors selected.

[266] Once each job has been evaluated, it must be ranked according to the value obtained. Minimum and maximum point scores must then be set for each classification level for the purpose of identifying equivalent jobs in accordance with the provisions of section 16 of the Charter.

[267] In this case, the University and the Union established a 26-point spread for each classification level, beginning with a minimum point score of 45 in Level 1 and setting the cut-off point for Level 17 at 644 points. Although certain jobs may have been placed at a disadvantage by the cut-off points for moving from one level to another, the evidence shows that it is not the results of the job classification process that are being contested.

[268] In the Tribunal's opinion, the University and the Union classified jobs very conscientiously, in accordance with section 16 of the Charter.

[269] The evidence demonstrates that during the classification process Clerical Group jobs obtained point scores spread over the point range associated with the first 10 classification levels. This was also the case, except in one or two instances, of Trades and Services Group jobs. Apart from these exceptions, it was only jobs in the Technical Group that were assigned to Levels 11 to 17.

[270] Therefore, the evidence shows, based on a comparison of job categories rather than of jobs themselves, that Clerical Group jobs are equivalent to jobs in the Trades and Services Group, while Technical Group jobs are clearly different. At no time did the jobs in the latter category constitute a grouping of equal value to either of the other two categories.

[271] In other words, the evidence demonstrates that, regardless of whether the comparison is based on job categories or job classifications, the pay equity exercise established that the predominantly female jobs in the Clerical Group are equivalent to the predominantly male jobs in the Trades and Services Group.

[272] Therefore, with regard to the first question, the Tribunal concludes that the University did

not discriminate against its Clerical Group employees during the job evaluation and classification process.

3.3 Salary comparison exercise and remuneration methods: discrimination practiced by Université Laval

[273] Once jobs of equal value have been identified, section 19 of the Charter may be applied by comparing the salaries actually paid for these jobs. In the case at bar, the University and the Union began this comparison exercise once they had finished classifying jobs.

[274] Ms. Parent and Ms. Jones said that the committee compared the salaries paid for the male-dominated and female-dominated jobs in each classification level and established a salary for each level. Ms. Parent explained that this salary was set based on that paid for the job in the classification level that was performed by the largest number of men. Both Ms. Parent and Ms. Jones declared that this method satisfied the financial imperatives represented by the total payroll and the individual salary guarantee, which ensured that no employees would experience a reduction in salary or a salary freeze.

[275] The University and the Union had agreed that the salary used for comparison purposes for Clerical Group jobs would be that associated with the last increment of the applicable pay scale. The salary comparison exercise was based on the fact that the comparable salary for all Clerical Group jobs was that associated with the last increment in the scale, while the comparable salary for all Trades and Services Group jobs was the single rate of pay which corresponded to the last increment in the scale.

[276] The University thus recognized that the comparable salary for jobs of equal value was the maximum rate of pay in the scale. The evidence shows that during the job evaluation process the same criteria were selected and applied for both Clerical Group jobs and Trades and Services Group jobs. Training, required experience and the complexity of jobs[72]were not evaluated differently depending on the category to which a job belonged. The University used a single system to evaluate jobs.

[277] Nothing in the evidence submitted or in the testimony received reveals any significant difference in the job descriptions that would justify giving full salary recognition to employees in the Trades and Services Group as soon as they enter jobs while granting such recognition only gradually to employees in the Clerical Group over a period of several years. Yet this is what the University did when it maintained an increment structure for Clerical Group employees and a single-pay-rate structure for Trades and Services Group employees.

[278] Ms. Parent's testimony helped to demonstrate to the Tribunal that all University employees must acquire a certain level of training and knowledge in an employment field before they can fully perform a job. It must be concluded, therefore, that this situation does not explain the existence of two different remuneration methods. On the contrary, if the reality thus described was so important that it warranted progressive recognition of salaries, this method should have been applied to both job groups based on the results of the job evaluation-

classification process.

[279] Based on Ms. Parent's testimony, it is clear that this is what the University wanted to do. However, owing to opposition from the Union, which was based on a traditional view of remuneration methods for trades and service jobs and on the principle that all employees should be awarded a full salary as soon as they enter a job, the University decided to maintain the status quo as far as methods of remuneration were concerned. According to Ms. Parent, the University made this decision based on the reasoning that women would benefit even if such methods were maintained.

[280] The duty of employers to grant, without distinction, equal salary or wages to the members of their personnel who perform equivalent work cannot be fulfilled by merely noting that the salaries female employees receive are better than those which they earned in the past. For the purposes of section 19 of the Charter, it is not the old and new salary of a person who has suffered discrimination that must be compared but the salary paid for jobs deemed of equal value performed by men and women.

[281] Adopting the interpretation of the principle of equality proposed by the University would contravene not only section 19 of the Charter but also the right to receive equal pay for work of equal value recognized by international law.

[282] As early as 1953, Recommendation No. 90 considered that the application of this principle would eliminate any difference between the minimum wage paid to women and that paid to men. This was also the case of the *International Convenant on Economic, Social and Cultural Rights*, which specified that adherence to the equal pay principle required the payment of "equal remuneration for work of equal value without distinction of any kind". As for the principles laid down in the *International Convention on the Elimination of All Forms of Discrimination Against Women*, they helped to exclude any interpretation that would allow de facto inequalities between men and women to persist.

[283] These international instruments serve as a reminder that effect must be given to the right to equal pay for work of equal value if the principle of equal remuneration is to be properly applied.

[284] For the final results of a pay equity exercise to comply with section 19 of the Charter and with international law, employees who hold equivalent jobs must actually receive the same salary without any distinction based on gender. Any persistence of wage disparities between jobs of equal value, even for a time, cannot be deemed to comply with section 19. Indeed, it would be difficult to conclude that two equivalent jobs receive equal remuneration if, for a number of years, the people who perform them do not earn the same salary.

[285] This situation is clearly illustrated by what happened to Ms. Ferland Pépin. At the end of the University's pay equity exercise, the job she performed was deemed to be equivalent to that held by her spouse. Nevertheless, Ms. Ferland Pépin continued to receive a lower salary than her spouse. However, in accordance with section 19 of the Charter, she should have received

the same salary as her spouse once it had been recognized that their jobs were of equal value. As in the case of other female Clerical Group employees, it was acknowledged that Ms. Ferland Pépin was performing work that was equivalent to that performed by certain male employees but she was not granted the equal pay she was entitled to receive.

[286] The persistence of wage disparities between men and women who hold jobs of equal value contravenes the guarantee of equality afforded by section 19 of the Charter, even if such differences are destined to disappear as women approach the last increment of their classification level. Once it has been recognized that existing pay differences between equivalent jobs are due to systemic discrimination, the right to equal remuneration requires that salaries be adjusted.

[287] The second paragraph of section 19 allows certain differences between individual salaries to exist as long as the criteria on which these differences are based are common to all staff members. For example, a difference based on experience or seniority is not considered discriminatory if such criteria apply to all employees. The second paragraph of section 19 emphasizes the fact that, in the present case, the adoption of two different remuneration methods for jobs deemed of equal value constitutes a prohibited form of discrimination against women. As soon as an employer applies such criteria as seniority, years of service or pertinent job experience only to women for salary determination purposes, he or she violates section 19 of the Charter.

[288] Therefore, the University contravened its obligation to grant equal pay to the members of its personnel who perform work deemed of equal value when it included article VII on pay scale integration rules in its agreement on the implementation of a new compensation system within the scope of its pay equity exercise.[73] This article stipulates that:

[Translation]

1. Employees shall be placed, for purposes of retroactive pay, at the increment offering a rate of pay equal to or immediately above that which they received, to which the value of the difference calculated on November 30, 1995 was previously added, without exceeding, however, the maximum rate associated with the jobs they have been assigned.

2. Trades and Services Group jobs are remunerated according to a single rate of pay; the last increment of the appropriate classification level is deemed to be the increment that corresponds to this single rate. (Emphasis added)

[289] By signing this provision, the University decided to apply a remuneration method based on pay scales to Clerical Group jobs alone while granting its employees in the Trades and Services Group the right to the maximum salary in each pay scale, given that this was the only rate of pay applicable. In this way, the University opted for a system that had discriminatory effects on women.

[290] It is important to point out that neither the pay scale method nor the single-pay-rate

method are discriminatory per se. Either system may be perfectly justified for reasons relating to the general economy of a pay policy. In the present case, it is the maintenance of a dual pay structure that is at the root of the discrimination.

[291] Therefore, the Tribunal must answer in the affirmative the second question raised. Within the scope of the pay equity exercise conducted in 1995-1996, the University discriminated against its Clerical Group employees by applying a different remuneration method to them in contravention of section 19 of the Charter.

[292] We must now determine whether the Union can also be held liable for this unequal salary treatment under section 19.

[293] In accordance with this section, employers alone are responsible for granting equal salaries or wages to the members of their personnel who perform equivalent work. Therefore, the University cannot invoke the Union's position, no matter how categorical it was, to justify the discriminatory wage treatment of its employees.

[294] It is true that in *Renaud*[74]the Supreme Court of Canada acknowledged that a union which causes discrimination or which contributes to it can be held liable for such discrimination. Sopinka J. explained that the union's responsibility may stem not only from its participation in formulating a work rule that has discriminatory effects but also from its obstruction of an employer's reasonable efforts to eliminate the discrimination.

[295] However, these comments by the Supreme Court are in keeping with a legislative context that allows employers and unions to be held jointly liable. This is not the case under section 19 of the Charter, which stipulates that employers alone are responsible for granting equal salaries for equivalent work.

[296] Like Décary J. of the Federal Court of Appeal in *Bell Canada* v. *CEP*,***[75]*** the Tribunal concludes that:

... It would fly in the face of the clear wording of the Act and the obvious intent of Parliament to find the unions equally liable either implicitly ... or indirectly ... for having participated in the establishment of different wages with respect to work of equal value.[76]

[297] For reasons of his own, the legislator decided that, under section 19 of the Charter, employers alone can be held liable for wage disparities. To conclude that the Union is responsible for this situation would be contrary to this provision.

[298] The Tribunal therefore concludes that the University alone is liable for the discriminatory salary treatment of the Clerical Group employees.

3.4Moral damages

[299] For each of the complainants and victims whose names appear in Appendices 2 and 3

of the re-amended initial application, the Commission is claiming $10 000.00 in moral damages for insult, humiliation and violation of their dignity.

[300] The Commission called four workers to testify during the hearing, namely, Ms. Gagnon, Ms. Paradis, Ms. Ferland Pépin and Ms. Rhéaume. Each explained how the results of the pay equity exercise had affected her.

[301] Ms. Rhéaume told the Tribunal how surprised she was when she read the 1996 agreement (Exhibit P-7). She said that once she had finished studying the document and Exhibit P-4, she noted that Trades and Services Group employees were still remunerated using a single-pay-rate method, while Clerical Group employees were paid according to an increment method. In Ms. Rhéaume's opinion, such an agreement was blatantly discriminatory. The Tribunal noted the disappointment, humiliation and feelings of injustice that Ms. Rhéaume still felt with regard to a pay equity exercise that was supposed to lead to equal remuneration but that, instead, merely perpetuated wage disparities while recognizing that certain jobs were equivalent.

[302] This is also the case of Ms. Gagnon, who derided the fact that as a result of the pay equity exercise she still had to acquire, after 25 years in the same position, two more years' experience to be placed at the last increment in her classification, while an employee in the Trades and Services Group obtained the maximum rate of pay during his or her first year of service. Ms. Gagnon described her feelings of incomprehension regarding what she perceived as a very unjust result.

[303] Ms. Ferland Pépin, whose spouse also works at the University, said that the results of the pay equity exercise perpetuated for several years the wage gap that already existed between her and her spouse despite the fact that their jobs were deemed to be of equal value. She told the Tribunal that this topic of conversation was taboo in her house.

[304] Ms. Paradis, for her part, expressed her surprise at having to wait until 2001 to obtain the same salary as that granted to employees in the Trades and Services Group as a result of an exercise which had nonetheless recognized that her job was equivalent to one of the jobs in that group.

[305] The Tribunal noted that each of these women viewed the persistence of wage disparities for various lengths of time as a real injustice. During their testimony, they described the disappointment, exasperation and humiliation they felt, especially when it was claimed that the pay equity exercise was exempt from discrimination.

[306] The Tribunal awards $10 000.00 in moral damages to Monique Rhéaume, Marjolaine Ferland Pépin, Lise Gagnon and Marie-Josée Paradis.

[307] However, the Tribunal cannot award the same compensation to all of the complainants and victims on the basis of this testimony alone. It was up to the Commission to prove that the results of the pay equity exercise had adverse effects on the people who have a Clerical Group

job. Experts could have testified about the negative perception that may be generated by undervaluation of work traditionally performed by women by describing the impact such practices have on victims. In the absence of such evidence, the Tribunal dismisses the Commission's application for moral damages for all the complainants and victims.

4. Conclusions

[308] FOR THESE REASONS, THE TRIBUNAL

CONSIDERING that the Human Rights Tribunal has jurisdiction over pay equity complaints filed with the Commission des droits de la personne et des droits de la jeunesse before November 21, 1997;

CONSIDERING that in the event the Tribunal concluded that discrimination has occurred, the attorneys for the different parties have agreed on the calculation of the sums payable in material damages to the complainants and victims, as shown in Exhibits P-14 A and P-14 B respectively;

CONSIDERING that the calculation of the sums shown in Exhibits P-14 A and P-14 B stops at October 31, 1999;

NOTES that the University violated the right to equality of its Clerical Group employees by not granting them the same salary or wages as their colleagues in the Trades and Services Group even though they perform jobs of equal value;

NOTES that the existence of a dual compensation system for Clerical Group employees and Trades and Services Group employees, as a result of the 1991-1996 pay equity exercise, has discriminatory effects in contravention of section 19 of the Charter;

NOTES that Clerical Group employees do not receive a salary equal to that of Trades and Services Group employees for work of equal value;

DECLARES that, under section 19 of the Charter, the University alone is responsible as an employer for granting equal salaries or wages to its employees for equivalent jobs.

[309] THEREFORE, THE TRIBUNAL

ORDERS the defendant and the interested party **TO CEASE** using the compensation system that has discriminatory effects on Clerical Group employees by applying to Clerical Group employees the same single-pay-rate structure that is applied to Trades and Services Group employees performing work of equal value in Levels 2 to 10;

ORDERS the defendant University and the interested party **TO RECOGNIZE**, in regard to Clerical Group jobs, which should thus be remunerated according to a single rate of pay like Trades and Services Group jobs, that it is the last increment of the applicable pay scale which is considered to be the increment that corresponds to this single rate.

ORDERS the defendant University **TO RECOGNIZE** retroactively to December 1, 1995, for the persons whose names appear in Appendix 1 of the re-amended initial application served on November 26, 1999, except Louis Baril, Hélène Delisle, Lyne Girard, Raymond Michel, Diane Robert, Gaston Quirion and Monique Côté whose applications were statute barred or were not accompanied by the consent required by the Charter, all the present and future rights, advantages and privileges to which they would have been entitled had it not been for the application of the discriminatory compensation system;

ORDERS the defendant University **TO PAY,** because of the application of the discriminatory compensation system, to the persons whose names appear in Appendix 1 of the re-amended initial application served on November 26, 1999, except Louis Baril, Hélène Delisle, Lyne Girard, Raymond Michel, Diane Robert, Gaston Quirion and Monique Côté, sums to compensate for losses suffered since December 1, 1995 and appropriate amounts to take into account overtime worked since December 1, 1995, increment advancements during the year, balances of sick leave credits paid, temporary assignment premiums, any promotions obtained since that date in a Clerical Group job and salary increases granted between June 1, 1998 and June 1, 1999, to which they would have been entitled had the defendant University applied on that date to the members of the Clerical Group the single-pay-rate structure that it applied to the employees of the Trades and Services group. These sums are as follows:

Complainants:

Allard, Suzanne	$4 993.14
Bédard, Louise	$1 835.30
Béland, François	$4 310.07
Bernatchez, Chantal	$2 248.68
Blais, Annette	$5 288.17
Blouin, Solange	$899.72
Bourassa, Danielle	$1 550.05
Bureau, Solange	$4 580.28
Caron, Brigitte	$4 808.11
Chabot, Colette	$2 255.49
Chouinard, Jocelyne	$1 573.53

Chouinard, Luce Drouin	$4 257.94
Côté, Carole	$1 734.88
Desbiens, Huguette L.	$2 235.32
Doyon, Louise	$1 569.53
Drolet, Marc-André	$4 396.87
Duval, Céline	$2 250.93
Ferland, Louise	$4 048.90
Fortin, Claude	$4 150.87
Fournier, Andrée	$5 920.64
Fournier, Monique C.	$3 273.36
Gagnon, Ginette	$2 760.66
Gagnon, Lise	$985.53
Gariépy, Marc	$15 020.97
Garneau, Andrée	$2 446.22
Gervais, Christine	$4 796.61
Gingras, Marie-France	$1 229.72
Gingras, Nicole	$4 290.28
Godbout, Line	$1 043.85
Gosselin, Anne	$4 065.60
Grenier, Suzanne	$2 213.82
Hallé, Diane	$2 201.51
Jobin, Sylvie S.	$4 343.09

Lachance, Bruno	$4 134.18
Lacroix, Josée	$3 795.45
Laflamme, Ginette	$8 370.18
Lalancette, Nicole	$2 095.21
Laliberté, Hélène	$4 206.99
Landry, Lise	$3 354.40
Landry, Louise	$5 711.80
Lapierre, Louise	$10 067.05
Lauzon, Suzanne	$3 242.86
Leblanc, Claire	$3 944.17
Lévesque, Lise	$2 974.58
Manseau, Marcelle	$5 637.42
Martineau, Sylvie	$3 405.99
McFadden, Marjolaine	$2 631.14
McKinnon, Marie	$2 872.07
Meilleur, Danielle	$2 655.77
Mercier, Louise	$1 102.71
Michaud, Huguette	$3 082.41
Morency, Diane	$1 929.11
Nadeau, Diane	$3 935.83
Ouellet, Lina	$2 699.32
Paquet, Thérèse	$2 630.58

Paradis Marie-Josée	$9 654.40
Parent, Anita	$3 098.92
Pelletier, Jacqueline	$2 183.62
Pépin, Marjolaine F.	$5 456.81
Pichette, Danielle	$2 006.97
Plourde, Danielle	$2 515.58
Rhéaume, Monique	$2 894.11
Richard Carole	$2 114.38
Roy, Céline	$1 490.92
Savoie, Élise	$3 355.28
St-Maur, Danielle R.	$8 042.36
Vachon, Hélène G.	$224.91

Victims:

Allard, Diane	$3 035.64
Arsenault-Roy, Claudette	$470.32
Aubé, Michel	$4 075.76
Barsalou, Mireille	$4 511.92
Benoît, Diane	$4 561.11
Bergeron, Lucie	$4 049.67
Bernard, Ginette	$528.25
Bernier, Michelle Boutin	$3 652.64
Bisson, Réjean	$5 828.39

Bouchard, Liliane	$3 826.66
Bouchard, Martin	$4 086.25
Bouchard, Roger	$4 624.90
Bouchard, Sophie	$895.72
Bouillon, Claude	$3 951.83
Boulet, Francine M.	$2 208.66
Bourdeau, Lynn	$2 530.39
Breton, Denis	$5 177.61
Caron R., Nicole	$3 762.73
Charland, Réjeanne	$5 727.04
Cloutier, Lise	$1 509.42
Cloutier, Yves	$5 553.24
Corneau, Claudine	$849.80
Côté, Huguette	$2 739.04
Couture Lessard, Ginette	$5 050.49
Couture, Dorothée	$4 083.38
Dauteuil, Michelyne	$3 726.96
Dionne, André	$5 304.90
Doyre, Denise	$1 50.03
Du Berger, Robert	$4 019.55
Ferland, Raynald	$3 976.07
Fortier, Lorraine	$1 646.68

Fréchette, Lucie	$11 789.70
Gagné, Claire	$5 231.42
Gagnon, Cécile	$2 725.77
Gagnon, Chantale	$5 597.20
Gagnon, Michèle	$1 157.05
Gosselin, Lise	$1 527.99
Gosselin, Louise	$3 272.78
Habel, Normande	$4 773.35
Hémond, Daniel	$7 703.36
Hovington, France	$2 752.43
Lafleur, Giselle	$2 429.54
Lavoie, Micheline	$1 603.56
Leclair, Louise Racette	$100.10
Legendre, Cécile	$3 918.24
Lemelin, Robert	$4 378.99
Lévesque, Lise C.	$2 821.93
Mazerolle, Donna	$659.52
McCarthy, Pierrette	$1 411.92
Michel, Jean	$5 153.78
Morin, Francine	$9 869.32
Nadeau, Louise	$1 158.04

Parent, Gaétan	$4 321.23
Parent, Yvette	$1 393.06
Racine, Jacques G	$4 836.75
Ratté, Linda	$324.80
Robert, Andrée	$724.50
Robichaud, Yvette	$3 030.61
Robitaille, Claire	$3 394.79
Robitaille, Martine	$4 717.31
Rochette, Martine	$3 750.52
Roy, Denys	$4 403.68
Thibert, Céline	$3 389.96
Vaillancourt, Viviane	$8 119.51

ORDERS the defendant University **TO PAY** the persons whose names appear in Appendix 1 of the re-amended initial application served on November 26, 1999, except Louis Baril, Hélène Delisle, Lyne Girard, Raymond Michel, Diane Robert, Gaston Quirion and Monique Côté, additional sums to compensate for wages lost since November 1, 1999, up to the date of the present judgment, according to the same bases of calculation used in Exhibits P-14 A and P-14 B;

ORDERS the defendant University **TO PAY** Monique Rhéaume, Marjolaine Ferland Pépin, Lise Gagnon and Marie-Josée Paradis, $10 000.00 each in moral damages for insult, humiliation and violation of their dignity and their right to full and equal recognition and exercise of their fundamental rights without discrimination based on gender.

THE WHOLE with interest as of the service of the offer of remedial measures, i.e. on November 11, 1998, at the rate set according to section 28 of the *Act respecting the Ministère du Revenu* (R.S.Q. c. M-31), as article 1619 C.C.Q. authorizes, plus costs.

PRESIDENT OF THE HUMAN RIGHTS TRIBUNAL

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[1] Amended initial application dated November 18, 1999.

[2] Reamended initial application dated December 2, 1999, see record of proceedings.

[3] Exhibit P-9: Remedial measures established at the 329th sitting of the complaints committee held on Tuesday, October 13, 1998 and resumed on Tuesday, October 27, 1998, with the committee acting under section 61 of the *Charter of human rights and freedoms* and in accordance with the *Regulation respecting the handling of complaints and the procedure applicable to the investigations of the Commission*.

[4] As indicated by s. 71.1, the Commission has the authority: "*to make a non-adversary investigation ... on its own initiative or following receipt of a complaint, into any situation*". Emphasis added.

[5] *Rules of practice of the Human Rights Tribunal*, C-12, r. I.I.

[6] *Mon Air Land Investment* v. *Southfort Investments Ltd*., (1981) C.A. 607; *Promotions Taillon Ltée* v. *Elliott et Braun Inc*., (1989) R.D.J. 240 (C.A.).

[7] Exhibit D-1: Collective agreement between Université Laval and the Syndicat des employées et employés de l'Université Laval, CUPE, Local 2500 (FTQ - CLC), February 1991 - November 1992.

[8] The Commission filed two exhibits containing the job evaluation manual: Exhibits P-3 and P-4. The first corresponds to the document signed during the negotiations (P-3), while the second is the final text that was included in the collective agreement and that corresponds to the final version of the job evaluation manual that was used in the job evaluation exercise (P-4).

[9] G.A. res. 217 A (III), U.N. Doc A/810 (1948).

[10] *Ibid*., Preamble.

[11] *Constitution of the International Labour Organization* (1948) 15 U.N.T.S. 194.

[12] Included in the ILO Constitution, *supra*, Note 11.

[13] (1953) 165 U.N.T.S. 303 [hereinafter: Convention No. 100].

[14] The ILO has adopted over 180 conventions since 1919, of which only around 30 have been ratified by Canada. SCHABAS, William A. and TURP, Daniel, *Droit international, canadien et québécois des droits et libertés: Notes et documents*, 2nd edition, Cowansville, Les Éditions

Yvon Blais, 1998, at 115.

[15] 1951, O.B. 14, Vol. XXXIV, No. 1. Pub. in Official Bulletins. [hereinafter: Recommendation No. 90].

[16] (1964) 521, U.N.T.S. 427.

[17] 1958, O.B., Vol. XLI, No. 2, 79.

[18] Recommendation No. 111, art. 2 (v).

[19] (1976) 993 U.N.T.S. 3.

[20] *Ibid*., art. 2.

[21] (1953) 165 U.N.T.S. 303.

[22] (1981) 1249 U.N.T.S. 13.

[23] Ratified by Canada on December 10, 1981, see [1982] Can. T.S. No. 31; ratified by Québec on October 20, 1981, see R.E.I.Q. (1984-89), No. (1981) (12), at 850.

[24] See SCHABAS, William A. and TURP, Daniel*, Droit international, canadien et québécois des droits et libertés: Notes et Documents*, 2nd edition. Cowansville, Les Éditions Yvon Blais, 1998, at 75, Note 1.

[25] A/CONF.177/20, chap. I, resolution 1, annex I.

[26] (1981) 1249 U.N.T.S. 13.

[27] The question of equal pay for equal work or work of equal value is discussed in strategic objective F.5, Women and the Economy Diagnosis.

[28] *Beijing Declaration*, Platform for Action, Women and the Economy, Strategic objective F.5, article 165.

[29] V*riend* v. *Alberta*, [1998] 1 R.C.S. 493, at 536.

[30] [1999] 3 S.C.R. 3, at 27.

[31] *Ibid.,* para. 41.

[32] *Insurance Corp. of British Columbia*v. *Heerspink*, [1982] 2 S.C.R. 145; *Winnipeg School Division No. 1* v. *Craton,* [1985] 2 S.C.R. 150; *Ontario Human Rights Commission* v. *Simpsons-Sears Ltd*., [1985] 2 S.C.R. 536; *Bhinder* v. *Canadian National Railway Company*, [1985] 2 S.C. R. 561; *Canadian National Railway Company* v. *Canada (Human Rights Commission),* [1987] 1 S.C.R. 1114*("Action Travail des Femmes"); Robichaud* v. *Canada (Treasury Board),* [1987] 2 S. C.R. 84*; Zurich Insurance Co.* v. *Ontario (Human Rights Commission),* [1992] 2 S.C.R. 321*; Canada (A.G.)* v.*Mossop,* [1993] 1 S.C.R. 554*; Gould* v. *Yukon Order of Pioneers,* [1996] 1 S.C. R. 571, at 635*; Béliveau St-Jacques* v. *Fédération des employées et employés de services publics inc*., [1996] 2 S.C.R. 345, at 402-403.

[33] *Ibid.,* para. 31.

[34] 2000, CSC 27.

[35] *Ibid*., para. 36.

[36] *C.N. v. Canada (Human Rights Commission),* 1 S.C.R. 1114, at 1139.

[37] R.S.C. (1985) c. H-6.

[38] [1996] 3 F.C. 789; 27 C.H.R.R. D/488.

[39] *Public Service Alliance of Canada* v. *Treasury Board,* (1991) 14 C.H.R.R.D/341 (Canadian Human Rights Tribunal*)*.

[40] *Public Service Alliance of Canada* v*. Department of National Defence, supra,* Note 38, D/495.

[41] *Ibid*.

[42] *Ibid*.

[43] 35 C.H.R.R. D/387, D/413.

[44] Éliane VOGEL-POLSKY, "L'équité salariale et l'égalité des chances en Europe occidentale - observations critiques," in Michel BROSSARD, ed., *Équité en matière de salaire et d'emploi*, Montréal, École de relations industrielles, Université de Montréal, 1989, at 16.

[45] Revised Statutes, 1964, c. 142.

[46] DION, Gérard, *Dictionnaire canadien des relations de travail*, 2nd edition, Québec, PUL, 1986, 293 p.

[47] *Ibid*., p. 68.

[48] R.S.Q., c. E-12.001.

[49] *Ibid.*, s. 54.

[50] DION, Gérard, *op. cit*., Note 46, at 82.

[51] *Ibid*.

[52] *Directive* 75/117/CEE *on the approximation of the laws of the Member States relating to the application of the principal of equal pay for men and women*, OJ No L 45, 19.2.1975, at 19. This Directive was adopted by the Council of the European Communities on February 10, 1975.

[53] *Ibid*., art. 1(2).

[54] Charter, para. 56(2).

[55] [1989] R.J.Q. 831, 839.

[56] *Supra*, Note 22.

[57] *Andrews* v. *Law Society of British Columbia*, [1989] 1 S.C.R. 143, at 163 and 164.

[58] [1989] 2 S.C.R. 879, at 926-927.

[59] *Ibid*., at 926-928.

[60] *Ibid*., at 925.

[61] *Québec (Ville de)* v. *Commission des droits de la personne du Québec, supra*, Note 55, 839. In this case, the majority of the Court of Appeal, except for Jacques J. (dissident), who viewed the pay practices of the City of Québec as a product of systemic discrimination, concluded that the municipality had not acted in a discriminatory fashion by paying female guards less than male guards even though both did the same duties.

[62] *Ibid*.

[63] *Central Okanagan School District No. 23* v. *Renaud*, [1992] 2 S.C.R., 970, at 989.

[64] [1999] 1 F.C. 113,

[65] *Ibid.,* para. 56.

[66] [1998] 1 S.C.R. 591.

[67] *Ibid*., para. 67-68.

[68] *Ibid*., para. 35.

[69] [1996] 3 S.C.R. 211.

[70] *Ibid*., para. 67.

[71] C: points obtained per job: by factor, total and classification level (rate of pay); D: conversion table.

[72] See Exhibits P-3 and P-4.

[73] Exhibit P-7.

[74] *Supra,* Note 63.

[75] *Supra*, Note 64.

[76] *Ibid.,* para. 56.